

SEP 22 1995

CLERK

Nos. 94-923 and 94-924

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

RUTH O. SHAW, *et al.*,*Appellants,*

v.

JAMES B. HUNT, JR., *et al.*,*Appellees,*

and

RALPH GINGLES, *et al.*,*Appellees.*

JAMES ARTHUR "ART" POPE, *et al.*,*Appellants,*

v.

JAMES B. HUNT, JR., *et al.*,*Appellees,*

and

RALPH GINGLES, *et al.*,*Appellees.*

Appeal from the United States District Court
Eastern District of North Carolina,
Raleigh Division

JOINT APPENDIX
Volume I of II
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[Counsel listed on inside front cover]

JURISDICTIONAL STATEMENTS FILED NOVEMBER 21, 1994
JURISDICTION NOTED JUNE 29, 1995

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JA-1

DOCKET ENTRIES IN THE DISTRICT COURT

**U. S. DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA**

Civil Docket for Case #: 92-CV-202

SHAW, et al v. HUNT, et al

Filed: 03/12/92

* * * *

Proceedings include all events

[Date—Number—Proceeding.]

3/12/92—1—Complaint and Motion for Preliminary and permanent injunction and for temporary restraining order seeks three-judge court, declaration that Congressional districts of State of NC are unconstitutional & defts. to submit redistricting plan prior to elections; costs & atty's fees. (j) [Entry date 03/16/92]

3/12/92—Summons(es) issued for William P. Barr, John Dunne, James G. Martin, James Gardner, Daniel T. Blue, Rufus L. Edmisten, NC Board of Election, M.H. Hood Ellis, Gregg O. Allen, William A. Marsh, Ruth Turner, Jane K. Youngblood (j) [Entry date 03/16/92]

3/12/92—Filing Fee Paid; FILING FEE \$ 120 RECEIPT # 18290 (j) [Entry date 03/16/92]

3/13/92—2—Acknowledgement of service by Edwin Speas, Senior Deputy Atty. General as to James G.

Martin, James Gardner, Daniel T. Blue, Rufus L. Edmisten, NC Board of Election, M. H. Hood Ellis, Gregg O. Allen, William A. Ruth Turner, June K. Youngblood 3/12/92 Answer due on 4/1/92 for June K. Youngblood, for Ruth Turner, for William A. Marsh, for Gregg O. Allen, for M. H. Hood Ellis, for NC of Election, for Rufus L. Edmisten, for Daniel T. Blue, for James Gardner, for James G. Martin (js) [Entry date 03/19/92]

3/25/92—3—Return of service executed as to William P. Barr, John Dunne 3/16/92 Answer due on 5/15/92 for John Dunne, for William P. Barr (js) [Entry date 03/26/92]

3/26/92—4—Order assigning Judge Richard L. Voorhees to the Eastern District of North Carolina for the period from 3-13-92 to 112/31/92. signed by Ervin, J.. OB Ref: MISC. O.B. #7, p. 225 (js) [Entry date 04/14/92]

3/26/92—5—Order of Designation of Three-Judge Court - the panel will consist of Judge Dickson Phillips of the 4th Circuit, Judge Richard Voorhees of the Western District of NC, & Judge Earl Britt. signed by Ervin, J. OB Ref: CIV. O.B. #117, p. 103. cy. to J. Britt. cys. to Speas, Renfer & Everett. (js) [Entry date 04/14/92]

3/26/92——Case Assigned to panel of Judge W. E. Britt and Judge Richard L. Voorhees and Judge James D. Phillips Jr. (js) [Entry date 04/14/92]

3/26/92—6—Order, set motion filing deadline for 4/13/92, Response to motion due 4/20/92, Reply to Response to Motion due 4/23/92, Motion hearing set for 4/27/92 at 10:00 am signed by Britt, J. cys. served on counsel, panel, & Joyce. (js) [Entry date 04/14/92]

4/9/92—7—Motion by (State Defts.) James G. Martin, James Gardner, Daniel T. Blue, Rufus L. Edmisten, NC Board of Election, M. H. Hood Ellis, Gregg O.

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Allen to dismiss. cy. to panel. (js) [Entry date 04/14/92]

4/9/92—8—Memorandum by (State Defts.) James G. Martin, James Gardner, Daniel T. Blue, Rufus L. Edmisten, NC Board of Election, M. H. Hood Ellis, Gregg O. Allen in support of [7-1] motion to dismiss. cy. to panel. (js) [Entry date 04/14/92]

4/13/92—9—Motion by (Federal Defts.) William P. Barr, John Dunne to dismiss. cy. to panel. (js) [Entry date 04/14/92]

4/13/92—10—Memorandum by (Federal Defts.) William P. Barr, John Dunne in support of [9-1] motion to dismiss. cy. to panel. (js) [Entry date 04/14/92]

4/17/92—11—Amended complaint by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock, adding :amends [1-1] complaint. cy. to panel. (js) [Entry date 04/24/92]

4/17/92—12—Memorandum by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock in support of [11-1] amended complaint. cy. to panel. (js) [Entry date 04/24/92]

4/20/92—13—Response by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock to [9-1] motion to dismiss, [7-1] motion to dismiss. cy. to panel. (js) [Entry date 04/24/92]

4/23/92—14—Reply by James G. Martin, James Gardner, Daniel T. Blue, Rufus L. Edmisten, NC Board of Election, M. H. Hood Ellis, Gregg O. Allen, William A. Marsh, Ruth Turner, June K. Youngblood to response to [7-1] motion to dismiss. cy. faxed to panel. (js) [Entry date 04/24/92]

- 4/23/92—15—Reply By William P. Barr, John Dunne to response [9-1] Motion to dismiss. cy. faxed to panel. (js) [Entry date 04/24/92]
- 4/24/92——Motion(s) submitted: [9-1] motion to dismiss submitted, [7-1] motion to dismiss submitted to J. Britt for 4/27/92 hearing. (js)
- 4/27/92——Motion hearing re: [9-1] motion to dismiss Motion hearing held, [7-1] motion to dismiss Motion hearing held on 4/27/92, Ctrm. #2, Seventh Floor, Raleigh, NC before Three Judge Court of: Britt, J., Voorhees, C.J., & Phillips, J. Counsel for pltf.: Robinson Everett; Counsel for State: Jefferson Powell, Tiare Smiley, Norma Harrell; Counsel for Fed.: Rebecca Wertz & Gerald Hebert. Carol Williams, Ct. Rptr. State & Fed. claims are dismissed. Memorandum Opinion forthcoming. Time: 1 1/2 hours. (js)
- 4/27/92—16—Order granting [9-1] motion to dismiss, granting [7-1] motion to dismiss signed by Britt, J. (for entire panel). OB Ref: CIV. O.B. #118, p. 17. cys. served. (js) [Edit date 04/27/92]
- 4/27/92—17—Judgment for William P. Barr, John Dunne, James G. Martin, James Gardner, Daniel T. Blue, Rufus L. Edmisten, NC Board of Election, M. H. Hood Ellis, Gregg O. Allen, William A. Marsh, Ruth Turner, June K. Youngblood against Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock. THIS ACTION IS DISMISSED. signed by Skinner, deputy clerk. OB Ref: CIV. O.B. #118, p. 18. cys. served. (js) [Edit date 04/27/92]
- 4/27/92——Case closed (js) [Entry date 04/28/92]
- 5/1/92——Transcript Filed - regarding hearing on Motions to Dismiss before Judges Britt, Voorhees &

Phillips on 4/27/92 at 10:00 am. Court Reporter - Carol Williams (js) [Entry date 05/04/92]

5/4/92——Mailed original transcript to J. Phillips for his use. (js)

5/27/92—18—Notice of appeal to U.S. Supreme Court by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock. (tc)

8/7/92—19—Findings of fact and conclusions of law signed by J. Dickson Phillips & W. Earl Britt; dissent by Richard Voorhees OB Ref: CIV. O.B. #119, p. 86. cys. served. (js) [Entry date 08/30/92]

12/14/92—20—Order - probable jurisdiction is noted by U.S. Supreme Court. (Signed by U.S. Supreme Court.) (tc) [Entry date 01/19/93]

12/22/92——Transmitted record on appeal to U.S. Supreme Court consisting of Vol. 1 - pleadings, index and trans. ltr. CC to pltf. and deft. (tc)

1/5/93—73—Memorandum by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock in support of [72-1] motion to substitute Dr. Ronald E. Weber for Dr. Peter A. Morrison as an expert witness. cys. to panel. (js) [Entry date 01/06/94]

6/29/93—21—Opinion from U.S. Supreme Court - reversing and remanding to USDC. (ah) [Entry date 06/30/93]

8/2/93—22—Motion by James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood to substitute parties & amend the caption (js) [Entry date 08/13/93]

- 8/3/93—23—Order granting [22-1] motion to substitute parties & amend the caption signed by Britt, J. cys. served. (js) [Entry date 08/13/93]
- 8/5/93—24—Order - It is ardered [sic] and adjudged by this cot [sic] that the judgmetn [sic] of the above court in this cause is reversed with costs and the case is remanded to the U.S. District Court for the Eastern District of North Carolina for further proceedings in conformity with the opinion of this court. It is further ordered that the appellants, Ruth O. Shaw, et al, recover from Janet Reno, Attorney General, et al., Threen [sic] Hundred Dollars (\$300.00) for their costs herein expended. signed by William Suter, Clerk Supreme Court lc Judge Britt. (ms) [Edit date 08/13/93]
- 8/5/93—**Remove appeal flag - no further appeals pending (ms)
- 8/5/93—Case reopened (js) [Entry date 08/13/93]
- 8/6/93—25—Order - That the appellants, Ruth O. Shaw, et al. recover from the state appellees Three Hundred Dollars (\$300.00) for their costs herein expended. signed by William Suter. lc Judge Britt. (ms) [Entry date 08/09/93] [Edit date 08/13/93]
- 8/6/93—26—Answer to Complaint by James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood (js) [Entry date 08/13/93]
- 8/9/93—27—Request for Discovery Stipulation: Stipulation on Discovery due by 9/1/93 (js) [Entry date 08/13/93]
- 8/16/93—28—Motion to intervene by Ralph Gingles, Virginia Newell, George Simkins, N. A. Smith, Ron Leeper, Alfred Smallwood, Oscar Blanks, David Moore, Robert L. Davis, C. R. Ward, Jerry B. Adams,

Jan Valder, Bernard Offerman, Jennifer McGovern, Charles Lambeth, Ellen Emerson, Lavonia Allison, George Knight, Leto Copeley, Woody Connette, Roberta Waddle, William M. Hodges. cy. to panel. (js)
[Entry date 08/23/93]

8/16/93—29—Memorandum by Ralph Gingles, Virginia Newell, George Simkins, N. A. Smith, Ron Leeper, Alfred Smallwood, Oscar Blanks, David Moore, Robert L. Davis, C. R. Ward, Jerry B. Adams, Jan Valder, Bernard Offerman, Jennifer McGovern, Charles Lambeth, Ellen Emerson, Lavonia Allison, George Knight, Leto Copeley, Woody Connette, Roberta Waddle, William M. Hodges in support of [28-1] motion to intervene by Ralph Gingles, Virginia Newell, George Simkins, N. A. Smith, Ron Leeper, Alfred Smallwood, Oscar Blanks, David Moore, Robert L. Davis, C. R. Ward, Jerry B. Adams, Jan Valder, Bernard Offerman, Jennifer McGovern, Charles Lambeth, Ellen Emerson, Lavonia Allison, George Knight, Leto Copeley, Woody Connette, Roberta Waddle, William M. Hodges. cy. to panel. (js)
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8/25/93—30—Order, Response to motion reset to 8/27/93 for [28-1] motion to intervene by Ralph Gingles, Virginia Newell, George Simkins, N. A. Smith, Ron Leeper, Alfred Smallwood, Oscar Blanks, David Moore, Robert L. Davis, C. R. Ward, Jerry B. Adams, Jan Valder, Bernard Offerman, Jennifer McGovern, Charles Lambeth, Ellen Emerson, Lavonia Allison, George Knight, Leto Copeley, Woody Connette, Roberta Waddle, William M. Hodges signed by Britt, J. OB Ref: CIV. O. B. #124, p. 101. counsel called & cys. served to counsel & panel. (js) [Entry date 08/26/93]

8/27/93—31—Stipulation on Discovery. cys. to panel. (js)
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- 8/27/93—32—Response by James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood to [28-1] motion to intervene by Ralph Gingles, Virginia Newell, George Simkins, N. A. Smith, Ron Leeper, Alfred Smallwood, Oscar Blanks, David Moore, Robert L. Davis, C. R. Ward, Jerry B. Adams, Jan Valder, Bernard Offerman, Jennifer McGovern, Charles Lambeth, Ellen Emerson, Lavonia Allison, George Knight, Leto Copeley, Woody Connette, Roberta Waddle, William M. Hodges. cys. to panel. (js) [Entry date 08/30/93]
- 8/27/93—33—Response by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock to [28-1] motion to intervene by Ralph Gingles, Virginia Newell, George Simkins, N. A. Smith, Ron Leeper, Alfred Smallwood, Oscar Blanks, David Moore, Robert L. Davis, C. R. Ward, Jerry B. Adams, Jan Valder, Bernard Offerman, Jennifer McGovern, Charles Lambeth, Ellen Emerson, Lavonia Allison, George Knight, Leto Copeley, Woody Connette, Roberta Waddle, William M. Hodges. cy. to panel. (js) [Entry date 08/30/93]
- 8/27/93—34—Memorandum by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock in support of [33-1] motion response. cy. to panel. (js) [Entry date 08/30/93]
- 8/27/93—35—Motion by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock for more definite statement as to the state debts.' 3rd, 5th & 6th defense. cy. to panel. (js) [Entry date 08/30/93]
- 9/7/93—36—Order granting [28-1] motion to intervene by Ralph Gingles, Virginia Newell, George Simkins, N. A. Smith, Ron Leeper, Alfred Smallwood, Oscar

Blanks, David Moore, Robert L. Davis, C. R. Ward, Jerry B. Adams, Jan Valder, Bernard Offerman, Jennifer McGovern, Charles Lambeth, Ellen Emerson, Lavonia Allison, George Knight, Leto Copeley, Woody Connette, Roberta Waddle, William M. Hodges signed by Britt, J. (for the court) OB Ref: CIV. O. B. #125, p. 16. cys. served. cys. to panel. (js) [Entry date 09/10/93]

9/7/93—36—Answer to Complaint by Ralph Gingles, Virginia Newell, George Simkins, N. A. Smith, Ron Leeper, Alfred Smallwood, Oscar Blanks, David Moore, Robert L. Davis, C. R. Ward, Jerry B. Adams, Jan Valder, Bernard Offerman, Jennifer McGovern, Charles Lambeth, Ellen Emerson, Lavonia Allison, George Knight, Leto Copeley, Woody Connette, Roberta Waddle, William M. Hodges (js) [Entry date 09/22/93]

9/8/93—37—Response by James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood to [35-1] motion for more definite statement as to the state defts.' 3rd, 5th & 6th defense (js) [Entry date 09/10/93]

9/8/93—38—Order on Scheduling by Judge Britt setting Discovery cutoff 12/15/93 Deadline for filing of all motions 12/31/93 Expert Witness List due on 10/15/93, No of Interrogatories: 75, and No of Depositions: 15. cys. to panel, attys. & Joyce. (js) [Entry date 09/10/93]

9/10/93—39—Order denying [35-1] motion for more definite statement as to the state defts.' 3rd, 5th & 6th defense signed by Britt, J. (for the court) OB Ref: CIV. O. B. #125, p. 20. cys. to attys. & panel. (js)

9/13/93—40—Motion to intervene by the Americans For Defense of Constitutional [sic] Rights, Inc. (js) [Entry date 09/22/93]

9/13/93—41—Memorandum by Americans for Def. in support of [40-1] motion to intervene by the Americans For Defense of Constitutional [sic] Rights, Inc. (js) [Entry date 09/22/93]

9/13/93—42—Motion to intervene by James Arthur "Art" Pope, Betty S. Justice, Doris Lail, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlie, The NC Repub. Party, Jack Hawke. cys. to panel. (js) [Entry date 09/22/93]

9/13/93—43—Memorandum by James Arthur "Art" Pope, Betty S. Justice, Doris Lail, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlie, The NC Repub. Party, Jack Hawke in support of [42-1] motion to intervene by James Arthur "Art" Pope, Betty S. Justice, Doris Lail, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlie, The NC Repub. Party, Jack Hawke. cys. to panel. (js) [Entry date 09/22/93]

9/15/93—44—Certificate of service by Americans for Def. re: Motion to Intervene. (js) [Entry date 09/22/93]

9/22/93—45—Response by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock to [42-1] motion to intervene by James Arthur "Art" Pope, Betty S. Justice, Doris Lail, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlie, The NC Repub. Party, Jack Hawke (js)

9/22/93—46—Response by James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood to [40-1] motion to intervene by the Americans for

Defense of Constitutional [sic] Rights, Inc. cys. to panel. (js)

9/30/93—47—Response by James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood to [42-1] motion to intervene by James Arthur "Art" Pope, Betty S. Justice, Doris Lail, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlie, The NC Repub. Party, Jack Hawke. cys. to panel. (js) [Entry date 10/01/93]

10/4/93—48—Response by Ralph Gingles, Virginia Newell, George Simkins, N. A. Smith, Ron Leeper, Alfred Smallwood, Oscar Blanks, David Moore, Robert L. Davis, C. R. Ward, Jerry B. Adams, Jan Valder, Bernard Offerman, Jennifer McGovern, Charles Lambeth, Ellen Emerson, Lavonia Allison, George Knight, Leto Copeley, Woody Connette, Roberta Waddle, William M. Hodges to [42-1] motion to intervene by James Arthur "Art" Pope, Betty S. Justice, Doris Laile, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlie, The NC Repub. Party, Jack Hawke. cy. to panel. (js) [Entry date 10/12/93]

10/4/93—49—Response by Ralph Gingles, Virginia Newell, George Simkins, N. A. Smith, Ron Leeper, Alfred Smallwood, Oscar Blanks, David Moore, Robert L. Davis, C. R. Ward, Jerry B. Adams, Jan Valder, Bernard Offerman, Jennifer McGovern, Charles Lambeth, Ellen Emerson, Lavonia Allison, George Knight, Leto Copeley, Woody Connette, Roberta Waddle, William M. Hodges to [40-1] motion to intervene by the Americans For Defense of Constitutional [sic] Rights, Inc. cy. to panel. (js) [Entry date 10/12/93]

- 10/4/93—Informal Status conference held on 10/4/93 before J. Britt. Dana Cunningham allowed to proceed pro hac vice for deft.-intervenor. (js) [Entry date 10/15/93]
- 10/12/93—50—Reply by James Arthur "Art" Pope, Betty S. Justice, Doris Lail, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlie, The NC Repub. Party, Jack Hawke to response to [42-1] motion to intervene by James Arthur "Art" Pope, Betty S. Justice, Doris Lail, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlie, The NC Repub. Party, Jack Hawke. cys. to panel. (js) [Entry date 10/13/93]
- 10/14/93—51—Motion for Elaine R. Jones, Theodore M. Shaw, Charles Stephen Ralston and Gailon W. McGowen, Jr. to appear pro hac vice for the deft.-intervenor. cy to J. Britt. (js) [Entry date 10/15/93]
- 10/14/93—52—Reply by Americans for Def. to response to [40-1] motion to intervene by the Americans For Defense of Constituional [sic] Rights, Inc. cys. to panel. (js) [Entry date 10/15/93]
- 10/14/93—53—Response by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock in support of [42-1] motion to intervene by James Arthur "Art" Pope, Betty S. Justice, Doris Lail, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlie, The NC Repub. Party, Jack Hawke. cys. to panel. (js) [Entry date 10/15/93]
- 10/21/93—54—Order granting [51-1]. motion for Elaine R. Jones, Theodore M. Shaw, Charles Stephen Ralston and Gailon W. McGowen, Jr. to appear pro hac vice for the deft.-intervenor signed by Britt, J. cys. to panel. cys. served. (js) [Entry date 10/25/93]

- 10/26/93—55—Motion by James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood with memorandum in support for protective order. cy. to panel. (js) [Entry date 11/14/93]
- 10/26/93—56—Motion by James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood to shorten time for response to mot. for prot. order or altern., for temporary protective order. cy. to panel. (js) [Entry date 11/14/93]
- 10/27/93—57—Temporary Protective Order granting [55-1] motion for protective order, granting [56-1] motion to shorten time for response to mot. for order or altern., for temporary protective order signed by Britt, J. OB Ref: CIV. O. B. #125, p. 125. cys. to counsel & panel. (js) [Entry date 11/14/93]
- 11/3/93—58—Order GRANTING [42-1] motion to intervene by James Arthur "Art" Pope, Betty S. Justice, Doris Lail, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlle and Jack Hawke, individually. The motion to intervene is DENIED as to The NC Repub. Party and Jack Hawke in his official capacity as chairman of the Rep. Party. DENYING [40-1] motion to intervene by the Americans For Defense of Constitutional [sic] Rights, Inc. The pltf. intervenors are allowed on the condition that that adopt the amended complaint as their own, and that they adhere to the discovery schedule on 9/8/93. signed by Phillips, J.. OB CIV. O. B. #126, p. 1. cys. served. (js) [Entry date 11/14/93]
- 11/10/93—59—Motion by James Arthur "Art" Pope, Betty S. Justice, Doris Lail, Joyce Lawing, Nat

Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlie, Jack Hawke for Michael Hess to appear pro hac vice (js) [Entry date 11/18/93]

11/15/93—60—Response by James Arthur "Art" Pope, Betty S. Justice, Doris Lail, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlie, Jack Hawke to [55-1] motion for protective order. cys. to panel. (js) [Entry date 11/18/93]

11/16/93—61—Response by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock to [55-1] motion for protective order. cys. to panel. (js) [Entry date 11/18/93]

11/22/93—62—Interrogatories propounded by James Arthur "Art" Pope, Betty S. Justice, Doris Lail, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlie, Jack Hawke to James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood. cys. to panel. (js) [Entry date 11/23/93]

11/29/93—63—Motion for Thomas Goldstein to file amicus brief. w/attach. brief. cys. to panel. (js) [Entry date 12/06/93]

11/30/93—64—Reply by James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood to response to [55-1] motion for protective order. cys. to panel. (js) [Entry date 12/06/93]

12/3/93—65—Motion by James Arthur "Art" Pope, Betty S. Justice, Doris Lail, Joyce Lawing, Nat Swanson,

Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlle, Jack Hawke to compel defts.' response to pltf.-int. 1st set of interr. cys. to panel. (js) [Entry date 12/06/93]

12/3/93—66—Memorandum by James Arthur "Art" Pope, Betty S. Justice, Doris Lall, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlle, Jack Hawke in support of [65-1] motion to compel defts.' response to pltf.-int. 1st set of interr. cys. to panel. (js) [Entry date 12/06/93]

12/7/93—67—Motion by James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood with memorandum in support for protective order regarding Notices of Deposition. cys. to panel. (js) [Entry date 12/08/93]

12/10/93—68—Amended Order on Scheduling - the responses to the discovery motions shall be filed w/in 10 days. No replies will be permitted to discovery motions. Judge Denson is appointed to assist the judges for discovery & non-dispositive matters. cys. to panel & counsel. (js) [Entry date 12/13/93]

12/10/93—Letter From: Edwin Speas Re: Defendants' Withdrawal of mot. for protective order regarding Notice of Deposition. cys. to panel. (js) [Entry date 12/13/93]

12/10/93—Withdrawal of [67-1] motion for protective order regarding Notices of Deposition (js) [Entry date 12/13/93]

12/14/93—Withdrawal of [65-1] motion to compel defts.' response to pltf.-int. 1st set of interr. - pursuant to 12/14/93 letter from pltf. intervenors. (js) [Entry date 12/28/93]

- 12/17/93—69—Document filed by intervenor-defendant Ralph Gingles, intervenor-defendant Virginia Newell, intervenor-defendant George Simkins, intervenor-defendant N. A. Smith, intervenor-defendant Ron Leeper, intervenor-defendant Alfred Smallwood, intervenor-defendant Oscar Blanks, intervenor-defendant David Moore, intervenor-defendant Robert L. Davis, intervenor-defendant C. R. Ward, intervenor-defendant Jerry B. Adams, intervenor-defendant Jan Valder, intervenor-defendant Bernard Offerman, intervenor-defendant Jennifer McGovern, intervenor-defendant Charles Lambeth, intervenor-defendant Ellen Emerson, intervenor-defendant Lavonia Allison, intervenor-defendant George Knight, intervenor-defendant Leto Copeley, intervenor-defendant Woody Connette, intervenor-defendant Roberta Waddle, intervenor-defendant William M. Hodges titled: GINGLES INTERVENORS' SUPPLEMENTAL IDENTIFICATION OF LAY WITNESSES. cy. to panel. (js) [Entry date 12/28/93]
- 12/20/93—70—Order on Scheduling by the Court setting Discovery cutoff 1/14/94; parties shall submit stipulation of facts by 1/28/94; The pretrial conference is tentatively set for 2/4/94. cys. served to counsel & panel. cy. to J. Todd. (js) [Entry date 12/28/93]
- 12/22/93—71—Order denying [63-1] motion for Thomas Goldstein to file amicus brief signed by Phillips, J. cys. served to counsel, panel & Mr. Goldstein. (js) [Entry date 12/28/93]
- 12/28/93—Terminated document mot. to appear phv - moot. (js)
- 1/5/94—72—Motion by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock to substitute Dr. Ronald E. Weber for Dr. Peter A. Morrison as an expert witness (js) [Entry date 01/06/94]

- 1/10/94—74—Response by James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood to [72-1] motion to substitute Dr. Ronald E. Weber for Dr. Peter A. Morrison as an expert witness. cys. to panel. (js) [Entry date 01/18/94]
- 1/11/94—75—Response by Ralph Gingles, Virginia Newell, George Simkins, N. A. Smith, Ron Leeper, Alfred Smallwood, Oscar Blanks, David Moore, Robert L. Davis, C. R. Ward, Jerry B. Adams, Jan Valder, Bernard Offerman, Jennifer McGovern, Charles Lambeth, Ellen Emerson, Lavonia Allison, George Knight, Leto Copeley, Woody Connette, Roberta Waddle, William M. Hodges to [72-1] motion to substitute Dr. Ronald E. Weber for Dr. Peter A. Morrison as an expert witness. cys. to panel. (js) [Entry date 01/18/94]
- 1/20/94—76—Order granting [72-1] motion to substitute Dr. Ronald E. Weber for Dr. Peter A. Morrison as an expert witness, set bench trial before Judges Britt, Phillips & Voorhees for 3/28/94 in Raleigh signed by Britt, J. OB Ref: CIV. - O. B. #127, P. 10. cys. to counsel, panel & J. Todd. (js) [Entry date 01/24/94]
- 1/20/94—77—Motion by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock, James Arthur "Art" Pope, Betty S. Justice, Doris Lall, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McFane, Sim A. DeLapp Jr., Richard S. Sahlie, Jack Hawke with memorandum in support to compel. cys. to panel. (js) [Entry date 02/02/94]
- 1/24/94—78—Motion by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock in limine. cys. to panel. (js) [Entry date 02/02/94]

- 1/24/94—79—Memorandum by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock in support of [78-1] motion in limine. cys. to panel. (js) [Entry date 02/02/94]
- 1/28/94—80—Response by James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood to [77-1] motion to compel. cys. to panel. (js) [Entry date 02/02/94]
- 2/2/94—81—Order granting in part, denying in part [77-1] motion to compel. Speaker Blue may be questioned about the subject newspaper articles to limited extent: 1) whether statements attributed to him were his statements; 2) whether the statements reflected his belief at the time he made them. signed by Britt, J. OB Ref: CIV. O. B. #127, p. 40. cys. faxed & served to counsel. (js) [Entry date 02/03/94]
- 2/3/94—Bench trial set at 10:00 3/28/94, Ctrm. #2, Seventh Floor, Raleigh, NC before Judges Britt, Voorhees & Phillips. cys. served. (js)
- 2/3/94—82—Conditional motion by James Arthur "Art" Pope, Betty S. Justice, Doris Lail, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlie, Jack Hawke for recusal of Judge Phillips. cys. to panel by counsel. (js)
- 2/3/94—83—Memorandum by James Arthur "Art" Pope, Betty S. Justice, Doris Lail, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlie, Jack Hawke in support of [82-1] motion for recusal of Judge Phillips. cys. to panel by counsel. (js)
- 2/3/94—84—Motion by James Arthur "Art" Pope, Betty S. Justice, Doris Lail, Joyce Lawing, Nat Swanson,

Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlie, Jack Hawke for temporary restraining order, for preliminary injunction to extend the filing period for candidates to the US House of Rep.. cys. to panel by counsel. (js)

2/3/94—85—Memorandum by James Arthur "Art" Pope, Betty S. Justice, Doris Lail, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlie, Jack Hawke in support of [84-1] motion for temporary restraining order, [84-2] motion for preliminary injunction to extend the filing period for candidates to the US House of Rep. cys. to panel by counsel. (js)

2/3/94—86—Motion by James Arthur "Art" Pope, Betty S. Justice, Doris Lail, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlie, Jack Hawke for preliminary injunction to enjoin further election proceedings for the U. S. House of Rep. under the existing congressional redistricting plan. cys. to panel by counsel. (js)

2/3/94—87—Memorandum by James Arthur "Art" Pope, Betty S. Justice, Doris Lail, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlie, Jack Hawke in support of [86-1] motion for preliminary injunction to enjoin further election proceedings for the U. S. House of Rep. under the existing congressional redistricting plan. cys. to panel by counsel. (js)

2/3/94—88—Motion by James Arthur "Art" Pope, Betty S. Justice, Doris Lail, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlie, Jack Hawke to shorten time for responses & replies to the prel. inj. motion regarding further election proceedings. cys. to panel by counsel. (js)

- 2/3/94——Deposition of Thomas Brooks Hofeller, Ph.D. taken on 12/8/93 & 12/9/93. (located in expandable w/loose exhibits). (js)
- 2/3/94——Deposition of Honorable Eva M. Clayton taken on 12/10/93. (js)
- 2/3/94——Deposition of John D. Merritt taken on 12/22/93. (js)
- 2/3/94——Deposition of Senator Dennis Jay Winner taken on 1/11/94. (js)
- 2/3/94——Deposition of Gerry F. Cohen taken on 3/4/92. (js)
- 2/3/94——Deposition of Gerry F. Cohen (TWO VOLUMES) - taken on 11/12/93/ & 11/15/93. w/loose exhibits in expandable folder. (js)
- 2/3/94——Pltf. Intervenors' notebook of exhibits & deposition excerpts for the motions for preliminary injunction & tro. (js)
- 2/3/94—89—Response by James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood to [78-1] motion in limine. cys. to panel. (js) [Entry date 02/04/94]
- 2/3/94—90—Response by Ralph Gingles, Virginia Newell, George Simkins, N. A. Smith, Ron Leeper, Alfred Smallwood, Oscar Blanks, David Moore, Robert L. Davis, C. R. Ward, Jerry B. Adams, Jan Valder, Bernard Offerman, Jennifer McGovern, Charles Lambeth, Ellen Emerson, Lavonia Allison, George Knight, Leto Copeley, Woody Connette, Roberta Waddle, William M. Hodges to [78-1] motion in limine. cys. to panel. (js) [Entry date 02/04/94]
- 2/4/94—91—(CORRECTED) Response by Ralph Gingles, Virginia Newell, George Simkins, N. A. Smith, Ron

Leeper, Alfred Smallwood, Oscar Blanks, David Moore, Robert L. Davis, C. R. Ward, Jerry B. Adams, Jan Valder, Bernard Offerman, Jennifer McGovern, Charles Lambeth, Ellen Emerson, Lavonia Allison, George Knight, Copeley, Woody Connette, Robert Waddle, William M. Hodges to [78-1] motion in limine. cys. to panel. (js) [Entry date 02/06/94]

2/4/94—92—Response by James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood to [84-1] motion for temporary restraining order. cys. to panel. (js) [Entry date 02/06/94]

2/4/94—93—Affidavit of Johnnie F. McLean by James B. Hunt, Dennis A. Wicker, Daniel T. Blue Mr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood Re: [92-1] response to motion for TRO. cys. to panel. (js) [Entry date 02/06/94]

2/4/94—94—Certificate of service by James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood regarding affidavit & response to mot. for TRO. cys. to panel. (js) [Entry date 02/06/94]

2/4/94——Motion hearing re: [84-1] motion for temporary restraining order before Judges Phillips and Britt held on 2/4/94, Ctrm. #2, Seventh Floor, Raleigh, NC. Counsel present: Robinson Everett, Tom Farr, Craig Mills, Tom Ellis, Edwin Speas, Tiare Smiley, Adam Stein. Donna Tomawski, Ct. Rptr. Time: 1 hour. TAKEN UNDER ADVISEMENT. (js) [Entry date 02/06/94]

2/4/94—95—Order denying [84-1] motion for temporary restraining order signed by Britt, J. For The Court.

OB Ref: CIV. O. B. #127, p. 48. cys. served & counsel called. (js) [Entry date 02/06/94]

2/4/94—Withdrawal of [82-1] motion for recusal of Judge Phillips made by Tom Farr at the 2/4/94 hearing. (js) [Entry date 02/06/94]

2/7/94—96—Joinder in Motions for Preliminary Injunction and TRO by plaintiff Ruth O. Shaw, plaintiff Melvin G. Shimm, plaintiff Robinson O. Everett, plaintiff James M. Everett cys. to panel. (js) [Entry date 02/08/94]

2/7/94—97—Order granting [88-1] motion to shorten time for responses & replies to the prel. inj. motion regarding further election proceedings, Reply to Response to Motion reset to 2/10/94 for [78-1] motion in limine, Response to motion reset to 2/22/94 for [84-2] motion for preliminary injunction to extend the filing period for candidates to the US House of Rep., reset to 2/22/94 for [86-1] motion for preliminary injunction to enjoin further election proceedings for the U. S. House of Rep. under the existing congressional redistricting plan, Reply briefs for mot. for prelim. injunctions due 2/25/94. Motion hearing before Judge W. E. Britt set for 9:00 3/1/94 for [86-1] motion for preliminary injunction to enjoin further election proceedings for the U. S. House of Rep. under the existing congressional redistricting plan, set for 9:00 3/1/94 for [84-2] motion for preliminary injunction to extend the filing period for candidates to the US House of Rep. Ctrm. #2, Seventh Floor, Raleigh, NC. signed by Britt, J. OB Ref: CIV. O. B. #127, p. 55. cys. served. (js) [Entry date 02/08/94]

2/9/94—98—Stipulation of dismissal w/o prejudice as to pltf.-intervenor Richard Scott Sahlie. cys. to panel. (js)

2/11/94—99—Reply by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G.

Bullock to response to [78-1] motion in limine. cys. to panel. (js) [Entry date 02/16/94]

2/17/94—Transcript Filed - regarding hearing on Motions before Judges Phillips & Britt on 2/4/94 in Raleigh, NC. Court Reporter - Donna Tomawski (js) [Entry date 02/18/94]

2/22/94—100—Request for Judicial Notice of Census Data filed by intervenor-defendant Ralph Gingles, intervenor-defendant Virginia Newell, intervenor-defendant George Simkins, intervenor-defendant N. A. Smith, intervenor-defendant Ron Leeper, intervenor-defendant Smallwood, intervenor-defendant Oscar Blanks, intervenor-defendant David Moore, intervenor-defendant Robert L. Davis, intervenor-defendant C. R. Ward, intervenor-defendant Jerry B. Adams, intervenor-defendant Jan Valder, intervenor-defendant Bernard Offerman, intervenor-defendant Jennifer McGovern, Charles Lambeth, intervenor-defendant Ellen Emerson, intervenor-defendant Lavonia Allison, intervenor-defendant George Knight, intervenor-defendant Leto Copeley, intervenor-defendant Woody Connette, intervenor-defendant Roberta Waddle, intervenor-defendant William M. Hodges. cy. to panel. (js) [Entry date 01/25/94]

2/22/94—101—Response by Ralph Gingles, Virginia Newell, George Simkins, N. A. Smith, Ron Leeper, Alfred Smallwood, Oscar Blanks, David Moore, Robert L. Davis, C. R. Ward, Jerry B. Adams, Jan Valder, Bernard Offerman, Jennifer McGovern, Charles Lambeth, Ellen Emerson, Lavonia Allison, George Knight, Leto Copeley, Woody Connette, Roberta Waddle, William M. Hodges to [84-2] motion for preliminary injunction to extend the filing period for candidates to the US House of Rep., [86-1] motion for preliminary injunction to enjoin further election proceedings for the U. S. House of Rep.

under the existing congressional redistricting plan. cy. to panel. (js) [Entry date 02/25/94]

2/22/94—102—Memorandum by Ralph Gingles, Virginia Newell, George Simkins, N. A. Smith, Ron Leeper, Alfred Smallwood, Oscar Blanks, David Moore, Robert L. Davis, C. R. Ward, Jerry B. Adams, Jan Valder, Bernard Offerman, Jennifer McGovern, Charles Lambeth, Ellen Emerson, Lavonia Allison, George Knight, Leto Copeley, Woody Connette, Roberta Waddle, William M. Hodges in support of [101-1] response. EXHIBITS LOCATED IN EXPANDABLE FOLDER. (js) [Entry date 02/25/94]

2/22/94—103—Motion for Richard Rosenbaum to file amicus brief on behalf of the United States of America. cy. to panel. (js) [Entry date 02/25/94]

2/22/94—104—Motion by USA for leave to file amicus brief in excess of 30 pages. cys. to panel. (js) [Entry date 02/27/94]

2/22/94—105—Motion by James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood for leave to file response brief in excess of 30 pages. cy. to panel. (js) [Entry date 02/27/94]

2/23/94—106—Order granting [105-1] motion for leave to file response brief in excess of 30 pages signed by Britt, J. cys. served. (js) [entry date 02/27/94]

2/23/94—107—Response by James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood to [84-2] motion for preliminary injunction to extend the filing period for candidates to the US House of Rep., [86-1] motion for preliminary injunction to enjoin further election proceedings for the U. S.

House of Rep. under the existing congressional redistricting plan. LOCATED IN EXPANDABLE FOLDER. cys. to panel. (js) [Entry date 02/27/94]

2/25/94—108—Reply by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock, James Arthur "Art" Pope, Betty S. Justice, Doris Lall, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Jack Hawke to response to [84-2] motion for preliminary injunction to extend the filing period for candidates to the US House of Rep., [86-1] motion for preliminary injunction to enjoin further election proceedings for the U. S. House of Rep. under the existing congressional redistricting plan. cys. to panel. (js) [Entry date 02/27/94]

2/28/94—109—Response by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock in opposition to [100-1] Request for Judicial Notice. cys. to panel. (js) [Entry date 03/10/94]

2/28/94—110—Response by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock to [103-1] motion for Richard Rosenbaum to file amicus brief on behalf of the United States of America. cys. to panel. (js) [Entry date 03/10/94]

2/28/94—111—Memorandum by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock in support of [110-1] response to motion to file amicus brief. cys. to panel. (js) [Entry date 03/10/94]

3/1/94—Motion hearing re: [84-2] motion for preliminary injunction to extend the filing period for candidates to the US House of Rep. Motion hearing held, [86-1] motion for preliminary injunction to enjoin further election proceedings for the U. S. House of

Rep. under the existing congressional redistricting plan Motion hearing held before Judge W. E. Britt, Judge Phillips & Judge Voorhees on 3/1/94, Ctrm. #2, Seventh Floor, Raleigh, NC. Counsel present: Tom Farr, Michael Hess, Robinson Everett, Eddie Speas, Tiare Smiley, Anita Hodgkiss, Adam Stein, Dayna Cunningham. USA attorneys present: Janice Cole & Rudy Renfer. The motion to file amicus brief is allowed but USA will not be a party. Pltfs. & Pltf.-Int. have through 3/4/94 to file response to amicus brief. Status conference will be called to prepare for trial. (js) [Entry date 03/10/94]

3/1/94—112—Order granting [103-1] motion for Richard Rosenbaum to file amicus brief on behalf of the United States of America, granting [104-1] motion for leave to file amicus brief in excess of 30 pages. Denying the request for recusal of Judge Phillips. signed by Britt, J. OB Ref: CIV. O. B. #127, p. 114. cys. served. (js) [Entry date 03/10/94]

3/1/94—113—Amicus Curiae Brief by United States in opposition to motion for preliminary injunction. (js) [Entry date 03/10/94]

3/4/94—114—Response by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock in opposition to [113-1] amicus brief. cys. to panel. (js) [Entry date 03/10/94]

3/9/94—115—Order denying [86-1] motion for preliminary injunction to enjoin further election proceedings for the U. S. House of Rep. under the existing congressional redistricting plan, denying [84-2] motion for preliminary injunction to extend the filing period for candidates to the US House of Rep., denying [78-1] motion in limine, granting deft.-int. request to take judicial notice signed by Britt, J. for the court. OB Ref: CIV. O. B. #127, p. 126. cys. served. (js) [Entry date 03/10/94]

- 3/14/94—116—Order on Scheduling by Judge Britt regarding the remaining pre-trial and trial activities. (CIV. O. B. #127, p. 130) Trial to start on 3/28/94 at 9:00 a.m. cys. served. cys. to panel. (js) [Entry date 03/22/94]
- 3/16/94—Deposition of Mary L. Peeler taken on 12/21/93. (js) [Entry date 03/22/94]
- 3/16/94—Deposition of Ronald E. Weber, Ph.D. taken on 2/2/94. (js) [Entry date 03/22/94]
- 3/16/94—Deposition of Richard L. Engstrom, Ph.D. taken on 12/29/93. (js) [Entry date 03/22/94]
- 3/16/94—Deposition of Daniel T. Blue, Jr. taken on 1/12/94. (js) [Entry date 03/22/94]
- 3/16/94—Deposition of Frank Winston Ballance, Jr. taken on 1/14/94. (js) [Entry date 03/22/94]
- 3/16/94—Deposition of John D. Merritt taken on 12/22/93. (js) [Entry date 03/22/94]
- 3/16/94—Deposition of J. Morgan Loussier, Ph.D. taken on 1/10/94. (js) [Entry date 03/22/94]
- 3/16/94—Deposition of Henry M. Michaux, Jr. taken on 1/12/94. (js) [Entry date 03/22/94]
- 3/16/94—Deposition of Alfred W. Stuart, Ph.D. taken on 1/4/94. (js) [Entry date 03/22/94]
- 3/16/94—Deposition of Nancy M. Burnap, Ph.D. taken on 1/11/94. (js) [Entry date 03/22/94]
- 3/16/94—Deposition of Dennis Jay Winner taken on 1/11/94. (js) [Entry date 03/22/94]
- 3/16/94—Deposition of Thomas Brooks Hofeller, Ph.D. (TWO VOLUMES) - taken on 12/8/93. (js) [Entry date 03/22/94]
- 3/21/94—117—Trial Stipulation by Ralph Gingles, Virginia Newell, George Simkins, N. A. Smith, Ron Leeper, Alfred Smallwood, Oscar Blanks, David Moore,

Robert L. Davis, C. R. Ward, Jerry B. Adams, Jan Valder, Bernard Offerman, Jennifer McGovern, Charles Lambeth, Ellen Emerson, Lavonia Allison, George Knight, Leto Copeley, Woody Connette, Roberta Waddle, William M. Hodges. cys. to panel. (js) [Entry date 03/22/94]

3/21/94—118—Trial Stipulation by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock, James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood, James Arthur "Art" Pope, Betty S. Justice, Doris Lail, Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlie, Jack Hawke. cys. to panel. (js) [Entry date 03/22/94]

3/21/94—119—Objection by Ralph Gingles, Virginia Newell, George Simkins, N. A. Smith, Ron Leeper, Alfred Smallwood, Oscar Blanks, David Moore, Robert L. Davis, C. R. Ward, Jerry B. Adams, Jan Valder, Bernard Offerman, Jennifer McGovern, Charles Lambeth, Ellen Emerson, Lavonia Allison, George Knight, Copeley, Woody Connette, Roberta Waddle, William M. Hodges to [116-1] Scheduling order. cys. to panel. (js) [Entry date 03/22/94]

3/22/94—120—Order granting [119-1] request from deft.-intv. Deft.-intv. may present testimony from one (1) fact witness, either Congressman Melvin Watt or Congresswoman Eva Clayton. signed by Britt, J. OB Ref: CIV. O. B. #128, p. 19. cys. faxed to counsel. cys. to panel. (js)

3/22/94—Deposition of Melvin Shimm taken on 10/27/93. (js)

3/22/94—Deposition of Robinson O. Everett taken on 10/28/93. (js)

- 3/22/94——Deposition of Ruth Agnes Olson Shaw taken on 10/27/93. (js)
- 3/22/94——Deposition of James Douglas McGregor Everett taken on 10/27 and 10/28/93. (js)
- 3/22/94——Deposition of N. Leo Daughtry taken on 1/14/94. (js)
- 3/23/94——Deposition of Lee Joseph Mortimer, Jr. taken on 11/29/93. (js)
- 3/23/94——Deposition of Sandra Grey Herring taken on 11/29/93. (js)
- 3/23/94——Deposition of Timothy G. O'Rourke, Ph.D. taken on 12/17/93. (js)
- 3/23/94——Deposition of Russell Jackson Hawke, Jr. taken on 12/1/93. (js)
- 3/23/94——Deposition of Dorothy Green Bullock taken on 10/28/93. (js)
- 3/23/94——Deposition of James Thrash taken on 11/29/93. (js)
- 3/23/94——Deposition of William R. Keech, Ph.D. taken on 12/16/93. (js)
- 3/23/94——Deposition of Alex W. Willingham, Ph.D. taken on 12/22/93. (js)
- 3/23/94——Deposition of Harry L. Watson, Ph.D. taken on 12/21/93. (js)
- 3/23/94——Deposition of James M. O'Reilly, Ph.D. taken on 12/20/93. (js)
- 3/23/94——Deposition of James Arthur Pope taken on 12/1/93. (js)
- 3/23/94——Deposition of David Reed Goldfield, Ph.D. taken on 12/28/93. (js)
- 3/23/94——Deposition of David Thomas Flaherty, Jr. taken on 1/13/94. (js)

- 3/23/94—Deposition of Eva M. Clayton taken on 12/10/93. (js)
- 3/24/94—Deposition of Milton Frederick Fitch, Jr. taken on 1/13/94. (js)
- 3/24/94—Deposition of Gerry F. Cohen taken on 11/12/93. (js)
- 3/24/94—Deposition of Gerry F. Cohen taken on 11/15/93. (js)
- 3/24/94—Deposition of Melvin L. Watt taken on 12/2/93. (js)
- 3/24/94—Deposition of Tiare Bowe Smiley taken on 11/5/93. (js)
- 3/24/94—Deposition of Glenn Newkirk taken on 12/20/93. (js)
- 3/24/94—Deposition of Leslie Jane Winner taken 11/4/93. (js)
- 3/24/94—Deposition of William R. Gilkeson taken 11/5/93. (js)
- 3/24/94—Deposition of John D. Merritt taken on 3/7/92. (js)
- 3/24/94—Deposition of Dr. Robert Weissberg taken on 12/10/93. (js)
- 3/24/94—Deposition of Gerry F. Cohen taken 3/4/92. (js)
- 3/24/94—121—Expert Witness Statements filed by intervenor-defendant Ralph Gingles, intervenor-defendant Virginia Newell, intervenor-defendant George Simkins, intervenor-defendant N. A. Smith, intervenor-defendant Ron Leeper, intervenor-defendant Smallwood, intervenor-defendant Oscar Blanks, intervenor-defendant David Moore, intervenor-defendant Robert L. Davis, intervenor-defendant C. R. Ward, intervenor-defendant Jerry B. Adams, intervenor-defendant Jan Valder, intervenor-de-

defendant Bernard Offerman, intervenor-defendant Jennifer McGovern, Charles Lambeth, intervenor-defendant Ellen Emerson, intervenor-defendant Lavonia Allison, intervenor-defendant George Knight, intervenor-defendant Leta Copeley, intervenor-defendant Woody Connolly, intervenor-defendant Roberta Waddle, intervenor-defendant William N. Hodges. cys. to panel. (3)

3/24/94—Deposition of Richard G. Wiest taken on 12/14/93. (3)

3/24/94—Deposition of Allan J. Lichman, Ph.D. taken on 12/16/93. (3)

3/24/94—122—Trial brief by James Arthur "Art" Pope, Betty S. Justice, Dora Lail, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McHane, Sam A. Delapp Jr., Richard S. Siddle, Jack Hawke re: burden of proof. cys. to panel. (3)

3/24/94—123—Trial brief by James Arthur "Art" Pope, Betty S. Justice, Dora Lail, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McHane, Sam A. Delapp Jr., Richard S. Siddle, Jack Hawke re: relevance and applicability of section 1 of the voting rights act. cys. to panel. (3)

3/24/94—124—Trial brief by James Arthur "Art" Pope, Betty S. Justice, Dora Lail, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McHane, Sam A. Delapp Jr., Richard S. Siddle, Jack Hawke re: admissibility of newspaper articles. cys. to panel. (3)

3/24/94—125—Motion by James Arthur "Art" Pope, Betty S. Justice, Dora Lail, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McHane, Sam A. Delapp Jr., Richard S. Siddle, Jack Hawke in limine. cys. to panel. (3)

3/24/94—126—Motion by James Arthur "Art" Pope, Betty S. Justice, Dora Lail, Joyce Lawing, Nat

Swanson, Rick Woodruff, J. Ralph Hixson, Audrey McNamee, Sam A. Delapp Jr., Richard S. Sahle, Jack Hawke in limine re: exclusion of evidence obtained by deft.-intv. through use of an ex parte subpoena to US Justice (exhibits 527, 528, 529, 530, 531). cys. to panel. (3)

174/94-127-Trial brief by James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Louke, Dorothy Presser, June K. Youngblood. cys. to panel. (3)

174/94-128-Designation of Discovery Materials filed by defendant James B. Hunt, defendant Dennis A. Wicker, defendant Daniel T. Blue Jr., defendant Rufus L. Edmisten, defendant NC Board of Election, defendant Edward J. High, defendant Jean H. Nelson, defendant Larry Louke, defendant Dorothy Presser, defendant June K. Youngblood. cys. to panel. (3)

174/94-129-Trial brief by Ralph Gingles, Virginia Newell, George Smither, N. A. Smith, Ben Loeper, Alfred Smallwood, Omar Harbo, David Moore, Robert L. Davis, C. E. Ward, Jerry B. Adams, Jan Valdez, Bernard Offerman, Jennifer McGovern, Charles Lambeth, Ellen Emerson, Lavonia Allison, George Knight, Leno Copeley, Woody Cometta, Robert Wadde, William M. Rogers. cys. to panel. (3)

174/94-130-Fact Witness Statements filed by intervenor-defendant Ralph Gingles, intervenor-defendant Virginia Newell, intervenor-defendant George Smither, intervenor-defendant N. A. Smith, intervenor-defendant Ben Loeper, intervenor-defendant Smallwood, intervenor-defendant Omar Harbo, intervenor-defendant David Moore, intervenor-defendant Robert L. Davis, intervenor-defendant C.

E. Ward, intervenor-defendant Jerry B. Adams, intervenor-defendant Jan Valder, intervenor-defendant Bernard Offerman, intervenor-defendant Ellen Emerson, intervenor-defendant Lavonia Allison, intervenor-defendant George Knight, intervenor-defendant Leto Copeley, intervenor-defendant Woody Connette, intervenor-defendant Roberta Waddle, intervenor-defendant William M. Hodges
cya. to panel. (s)

3/24/94—131—Exhibits to Stipulations to be offered by deflt-intv. filed by intervenor-defendant Ralph Gingles, intervenor-defendant Virginia Newell, intervenor-defendant George Simkins, intervenor-defendant N. A. Smith, intervenor-defendant Ron Leeper, intervenor-defendant Alfred Smallwood, intervenor-defendant Oscar Blanks, intervenor-defendant David Moore, intervenor-defendant Robert L. Davis, intervenor-defendant C. R. Ward, intervenor-defendant Jerry B. Adams, intervenor-defendant Jan Valder, intervenor-defendant Bernard Offerman, intervenor-defendant Jennifer McGovern, Charles Lambeth, intervenor-defendant Ellen Emerson, intervenor-defendant Lavonia Allison, intervenor-defendant George Knight, intervenor-defendant Leto Copeley, intervenor-defendant Woody Connette, intervenor-defendant Roberta Waddle, intervenor-defendant William M. Hodges.
cya. to panel. (s)

3/24/94—Deposition of Stephan Thernstrom, Ph.D. taken on 1/7/94. (s)

3/24/94—Deposition of Douglas J. Amy, Ph.D. taken on 1/6/94. (s)

3/25/94—132—Pretrial order filed signed by all counsel.
cya. to panel by counsel. (s)

3/25/94—Received Answer of Deflt-intv. Gingles to plffs.' 1st set of written interr. cya. to panel by atty.
(s)

- 3/25/94—133—Response by James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood in opposition to admission of newspaper articles attached as exhibits to the stipulations by the parties. cys. to panel. (js)
- 3/25/94—134—Trial brief by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock w/attach. report of Sandra Grey Herring. cys. to panel. (js) [Entry date 03/27/94]
- 3/28/94—135—FILED IN OPEN COURT Affidavit of Andrew C. Wright (copy) in separate blue binder - newspaper articles. (js) [Entry date 03/29/94]
- 3/28/94—136—Certificate of service by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock re: Report of Sandra Grey Herring. (js) [Entry date 03/29/94]
- 3/28/94—137—FILED IN OPEN COURT - pltfs. responses to deflt.-intv. first set of written interr. (copy) (js) [Entry date 03/29/94]
- 3/28/94—138—FILED IN OPEN COURT - pltfs.' responses to defts.' third set of written interr. (copy). (js) [Entry date 03/29/94]
- 3/29/94—Transcript Filed of 3-judge trial for Monday, March 28, 1994 (Judges Phillips, Britt, Voorhees) Court Reporter - Donna Tomawski (js)
- 3/30/94—Transcript Filed of trial held on 3/29/94 - before Judges Phillips, Britt & Voorhees: Court Reporter - Donna Tomawski (js)
- 3/30/94—Motion in open court by United States , for protective order regarding deflt-intv. trial exhibits #528, #529 & #530 (js) [Entry dte 04/01/94]
- 3/30/94—Response by Ralph Gingles, Virginia Newell, George Simkins, N. A. Smith, Ron Leeper, Alfred

Smallwood, Oscar Blanks, David Moore, Robert L. Davis, C. R. Ward, Jerry B. Adams, Jan Valder, Bernard Offerman, Jennifer McGovern, Charles Lambeth, Ellen Emerson, Lavonia Allison, George Knight, Leto Copeley, Woody Connette, Roberta Waddle, William M. Hodges to [0-0] motion for protective order regarding deft.-intv. trial exhibits #528, #529 & #530. cys to panel. (js) [Entry date 04/01/94]

3/30/94—140—Order granting [0-0] motion for protective order regarding deft.-intv. trial exhibits #528, #529 & #530, signed by Phillips, Britt & Voorhees, cys. served. (js) [entry date 04/01/94] [Edit date 04/05/94]

3/31/94—Transcript Filed on Three Judge Panel Trial held on 3/30/94 - before Judges Phillips, Britt & Voorhees. Court Reporter - Donna Tomawski (js) [Entry date 04/01/94]

4/1/94—Transcript Filed for Three Judge Panel Trial held on 3/31/94 - before Judges Phillips, Britt & Voorhees. Court Reporter - Donna Tomawski (js)

4/4/94—Transcript Filed of Bench Trial on 4/1/94 - before Judges Phillips, Britt & Voorhees. Court Reporter - Donna Tomawski (js) [Entry date 04/05/94]

4/4/94—141—Motion for A. Leon Higginbothan, Jr. to file amicus brief on behalf of The Congressional Black Caucus. cys. to panel. (js) [entry date 04/05/94]

4/4/94—142—Motion for A. Leon Higginbotham, Jr. to appear pro hac vice. cys. to panel. (js) [Entry date 04/05/94]

4/4/94—143—Order denying [142-1] motion for A. Leon Higginbotham, Jr. to appear pro hac vice, denying [141-1] motion for A. Leon Higginbothan, Jr. to file amicus brief signed by Phillips, USCJ. OB Ref: CIV. O. B. #128, p. 50. cys. served. (js) [Entry date 04/05/94]

4/4/94—Bench trial held . Court Reporter: Donna Tomawski before Judge J. D. Phillips Jr., Judge W. E. Britt & Judge Richard L. Voorhees from 3/28/94 to 4/4/94. Counsel present: Michael Hess, Robinson Everett & Tom Farr for pltfs. & pltf.-intv. Edwin Speas, Tiare Smiley, Adam Stein, Anita Hodgkiss. & Dayna Cunningham for defts. & deft.-intv. REMAINING SCHEDULE: Parties to file & deliver Findings of Fact & Conclusions of Law by 4/11/94; Parties to file & deliver Statement of Objections for Use by Court by 4/14/94. Court will reconvene on 4/18/94 at 9:00 am to hear final argument. Each party limited to 15 minutes. May hear evidentiary questions if court decides. Trial Time: 23 hours. (js) [entry date 04/05/94]

4/5/94—Transcript Filed re: Bench Trial held on 4/4/94 - before Judges Phillips, Britt & Voorhees. Court Reporter - Donna Tomawski (js)

4/6/94—144—SCHEDULING ORDER - 1) all counsel to provide clerk revised list of exhibits & update of objections to exhibits. 2) proposed findings of fact and conclusions of law due by 5:00 pm on 4/11/94. 3) statement of objections for use by court of any evidence in proposed findings of fact due 4/14/94. 4) additional briefs not exceeding 5 pages may be filed by 4/14/94. Hearing set for 9:00 am on 4/18/94, Ctrm. #2, Raleigh. signed by Britt, J. cys. to panel & counsel. (js)

4/11/94—145—PLAINTIFFS' Proposed Findings of Fact and Conclusions of Law by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett. Dorothy G. Bullock. cy. to panel. (js) [Entry date 04/17/94]

4/11/94—146—PLAINTIFF INTERVENORS' Proposed Findings of Fact and Conclusions of Law by James Arthur "Art" Pope, Betty S. Justice, Doris Lail,

Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. DeLapp Jr., Richard S. Sahlle, Jack Hawke. cy. to panel. (js) [Entry date 04/17/94]

4/11/94—147—DEFENDANTS' Proposed Findings of Fact and Conclusions of Law by James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood. cy. to panel. (js) [Entry date 04/17/94]

4/11/94—148—DEFT. INTERVENORS' Proposed Findings of Fact and Conclusions of Law by Ralph Gingles, Virginia Newell, George Simkins, N. A. Smith, Ron Leeper, Alfred Smallwood, Oscar Blanks, David Moore, Robert L. Davis, C. R. Ward, Jerry B. Adams, Jan Valder, Bernard Offerman, Jennifer McGovern, Charles Lambeth, Ellen Lavonia Allison, George Knight, Leto Copeley, Woody Connette, Roberta Waddle, William M. Hodges. cy. to panel. (LOCATED IN BLACK BINDER). (js) [Entry date 04/17/94]

4/11/94—149—Motion by United States for leave to file amicus brief in excess of 30 pages. cy. to panel. (js) [Entry date 04/17/94]

4/12/94—150—Motion by United States for leave to file amended post trial amicus brief. cy. to panel. (js) [Entry date 04/17/94]

4/13/94—151—Response by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock to [150-1] motion for leave to file amended post trial amicus brief, [149-1] motion for leave to file amicus brief in excess of 30 pages. cy. to panel. (js) [Entry date 04/17/94]

4/13/94—152—Memorandum by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock in support of [151-1] motion

- response to USA's mot. to file amended AMICUS brief. cy. to panel. (js) [Entry date 04/17/94]
- 4/14/94—153—ERRATA to pltf.-intv.'s Proposed Findings of Facts (docket #146). cy. to panel (js) [Entry date 04/17/94]
- 4/14/94—154—ERRATA to defta.' Proposed Findings of Fact. (docket entry #147). cy. to panel. (js) [Entry date 04/17/94]
- 4/14/94—155—Deftha.' Evidentiary Objections to Pltfs.' and Pltf.-Intv.'s Proposed Findings of Fact. cy. to panel. (js) [Entry date 04/17/94]
- 4/14/94—156—Deft.-Intvs.' Objection to Evidence Used by Opposing Parties. cy. to panel. (js) [Entry date 04/17/94]
- 4/14/94—157—Pltfs.' and Pltf.-Intvs.' Statement of Objections to Deftha.' Proposed Findings of Fact and Exhibits. cy. to panel. (js) [Entry date 04/17/94]
- 4/14/94—158—Pltfs. and Pltf.-Intvs.' Statement of Objections to Deft.-Intvs.' Fact Witness Statements (exhibit 502), Stipulations, Proposed Findings of Fact & Exhibits. cy. to panel. (js) [Entry date 04/17/94]
- 4/14/94—159—Pltfs. and Pltf.-Intvs.' Statement of Evidentiary Objections to the Use of Deftha.' and Deft.-Intvs.' Expert Testimony. cy. to panel. (js) [Entry date 04/17/94]
- 4/14/94—160—Post Trial brief by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock. cy. to panel. (js) [Entry date 04/17/94]
- 4/14/94—161—Pltf.-Intvs.' Reply Brief to Deftha.' Proposed Findings of Fact. cy. to panel. (js) [Entry date 04/17/94]
- 4/15/94—162—Order granting in part, denying in part [150-1] motion for leave to file amended post trial

amicus brief, granting in part, denying in part [149-1] motion for leave to file amicus brief in excess of 30 pages. CLERK IS DIRECTED TO RETURN THE FIRST AMICUS BRIEF. THE CLERK IS DIRECTED TO RETURN PAGES 2 - 38 OF THE AMENDED AMICUS BRIEF & RETAINING PAGES 39 - 72 FOR FILING WITH THE COURT. signed by Brill, J. CB Ref: CIV. G. B. #128, p. 79, cys. faxed to panel & counsel. cy. to USA. (s) [Entry date 04/17/94]

4/15/94-163-Post Trial brief by United States (consisting of pages 39 - 72). cy. to panel. (s) [Entry date 04/17/94]

4/18/94-164-Motion by James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Eason, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June E. Youngblood, Ralph Gingles, Virginia Newell, George Sinkin, N. A. Smith, Ron Loeper, Alfred Smallwood, Oscar Hanks, David Moore, Robert L. Davis, C. R. Ward, Jerry B. Adams, Jan Valdez, Bernard Offerman, Jennifer McGovern, Charles Lambeth, Ellen Emerson, Lavonia Allison, George Knight, Leta Capoley, Woody Connette, Roberta Waddle, William M. Hodges with memorandums in support to strike (1) Statement of Objections to Defts.' Proposed Pleading of Facts and Exhibits; (2) Statement of Objections to Deft.-Intvs.' Fact Witness Statements, Stipulations and Proposed Pleadings of Fact and Exhibits; (3) Statement of Evidentiary Objections to the Use of Defts.' and Deft.-Intvs.' Expert Testimony; AND ALTERNATIVELY, Motion to Preclude Pltfs. and Plt.-Intvs. from presenting Oral Final Argument. cy. to panel. (s) [Entry date 05/13/94]

4/22/94-165-Response by Ruth G. Shaw, Melvin G. Eason, Robinson G. Everett, James M. Everett, Dorothy G. Bullock in opposition to [163-1] trial brief

by United States. cys. to panel. (js) [Entry date 05/13/94]

4/28/94—Transcript Filed - regarding hearing on Closing Arguments on 4/18/94, Ctrm. #2, Raleigh before Judges Phillips, Voorhees & Britt. Court Reporter - Jo Bush. cys. to panel. (js) [Entry date 05/13/94]

6/28/94—166—Subsequently Decided Authority - Louisiana v. Hayes (js) [Entry date 08/04/94]

7/1/94—167—Subsequently Decided Authority - Johnson v. de Grandy; Holder v. Hall (js) [Entry date 08/04/94]

7/25/94—168—Subsequently Decided Authority - BD. OF EDUC. v. GRUMET (js) [Entry date 08/04/94]

7/27/94—169—Subsequently Decided Authority - HAYS v. LOUISIANA (js) [Entry date 08/04/94]

8/1/94—172—Judgment for James B. Hunt, Dennis A. Wicker, Daniel T. Blue Jr., Rufus L. Edmisten, NC Board of Election, Edward J. High, Jean H. Nelson, Larry Leake, Dorothy Presser, June K. Youngblood, Ralph Gingles, Virginia Newell, George Stinkins, N. A. Smith, Ron Leeper, Alfred Smallwood, Oscar Blanks, David Moore, Robert L. Davis, C. R. Ward, Jerry B. Adams, Jan Valder, Bernard Offerman, Jennifer McGovern, Charles Lambeth, Ellen Emerson, Lavonia Allison, George Knight, Leto Copeley, Woody Connette, Roberta Waddle, William M. Hodges against Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock, James Arthur "Art" Pope, Betty S. Justice, Dora Lall, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. Delapp Jr., Richard S. Sahlle, Jack Hawke. The challenged congressional redistricting plan does not

violate any rights of the pltf's. or their supporting intervenors. signed by Skinner, deputy clerk. CIV. O. B. #130, p. 87. cys. served. (js) [Edit date 08/04/94]

8/1/94—170—Findings of fact and conclusions of law signed by Phillips, Senior Circuit Judge; Britt, District Judge, EDNC; Voorhees, Chief District Judge, WDNC - concurring in part, dissenting in part. THE CHALLENGED REDISTRICTING PLAN DOES NOT VIOLATE ANY RIGHTS OF THE PLTFS. OR PLTF.-INTERVENORS. OB Ref: CIV. O. B. #130, p. 85. cys. served. THE JUDGES RESERVE THE RIGHT TO REVISE THEIR RESPECTIVE OPINIONS BY 8/21/94. (LOCATED IN SEPARATE EXPANDABLE FOLDER) (js) [Entry date 08/04/94]

8/1/94—171—Order - the majority judges and the dissenting judge reserve the right to revise their respective opinions by 8/21/94. signed by Phillips, Senior Circuit Judge. OB Ref: CIV. O. B. #130, p. 86. cys. served. (js) [Entry date 08/04/94]

8/1/94—Case closed - PERMANENT (js) [Entry date 08/16/94]

8/15/94—173—Motion by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock to amend [170-1] findings of fact order. cys. to panel. (js) [Entry date 08/16/94] [Edit date 08/16/94]

8/18/94—174—Notice of appeal by James Arthur "Art" Pope, Betty S. Justice, Doris Lail, Joyce Lawing, Nat Swanson, Rick Woodruff, J. Ralph Hixon, Audrey McBane, Sim A. Delapp, Jr and Jack Hawke to the Supreme Court of the United States. Appeal record due on 9/27/94 - lc Supreme Court with copy of Opinion, lc Three Judge Panel, U.S. Atty. and Counsel of Record. (ms) [Entry date 08/19/94]

- 8/22/94—175—Amended findings of fact and conclusions of law OB Ref: CIV. O.B. #131, p. 48. cys. served. (js) [Entry date 08/28/94]
- 8/29/94—176—Notice of appeal to Supreme Court by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett. Dorothy G. Bullock -Check in the Amount of \$300.00, check # 4467 to Supreme Court, 1c Counsel of Record, 1c Three Judge Panel. (ms)
- 9/1/94—177—Order denying [173-1] motion to amend [170-1] findings of fact order. Chief Judge Voorhees, dissenting. signed by Judge Britt. OB Ref: CV OB # 131, p. 63 cys to Counsel of Record. (ms) [Entry date 09/06/94]
- 9/15/94—178—Subsequent Notice of appeal by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock re: [174-1] appeal by Rick Woodruff, Nat Swanson, Joyce Lawing, Doris Lail, Betty S. Justice, James Arthur "Art" Pope (ms)
- 9/16/94—179—Three-Judge court- Notice of appeal to the Supreme Court of the United States by counsel (Thomas F. Ellis) for plaintiff-intervenors. (ag) [Entry date 09/20/94] [Edit date 09/20/94]
- 9/21/94—180—Subsequent Notice of appeal by Ruth O. Shaw, Melvin G. Shimm, Robinson O. Everett, James M. Everett, Dorothy G. Bullock re: [178-1] modifier appeal by Dorothy G. Bullock, James M. Everett, Robinson O. Everett, Melvin G. Shimm, Ruth O. Shaw. No copy to Supreme Court by District Court. (ag) [Entry date 09/26/94]
- 10/21/94—181—Order - The time for filing a jurisdictional statement in the above entitled case, be and the same is hereby extended to and including November 21, 1994.signed by William Rehnquist, Chief Justice of the United States. (ms) [Entry date 10/24/94]

RELEVANT PLEADINGS

STIPULATIONS BY THE PARTIES

* * * *

II. The General Assembly

10. The North Carolina General Assembly consists of the Senate and the House of Representatives. N.C. Const. Art. II, § 1.

11. The North Carolina Senate has 50 members. In 1990, 50 Senators were elected from 35 districts for two-year terms. N.C. Const. Art. II, §§ 2, 3, and 9; former N.C. Gen. Stat. § 120-1 (amended effective January 14, 1992). The terms of the 50 members elected in 1990 commenced on January 1, 1991.

12. Of the 50 members of the 1991 Senate, 36 were Democrats and 14 were Republicans, and 45 were white and 5 were black. The occupations of the members of the 1991 Senate included attorney, realtor, banker, educator, physician, insurance, retail merchant, farmer, retired US Postmaster, and restaurateur. A listing of all 1991 Senators by political party and occupation is attached as Exhibit 1.

13. At the time of redistricting in 1981 and 1982, there was one black serving in the Senate. There was also one black serving in the Senate in 1983. Three blacks served in the Senate in 1985; 2 served in 1987; and 5 served in 1989. At the time of redistricting in 1991 and 1992, there were 5 blacks serving in the Senate. Since the 1992 elections, 7 blacks have served in the Senate. Five of these Senators were elected from single-member majority black districts, while Senator Howard N. Lee from Orange County was elected from a two-member majority white district, and Senator Ralph A. Hunt from Durham County was also elected from a two-member majority white district. The names of the black Senators serving since 1981 are contained in Exhibit 2.

14. In 1991 and 1992, Lieutenant Governor James C. Gardner, a white male Republican, was President of the Senate; Henson P. Barnes, a white male Democrat was President Pro Tempore; and Kenneth Royall, also a white male Democrat, was Deputy President Pro Tempore.

15. The North Carolina House of Representatives has 120 members. In 1990, 120 Representatives were elected from 72 districts for two-year terms. N.C. Const. Art. II, §§ 4, 5, and 9; former N.C. Gen. Stat. § 120-2 (amended effective January 14, 1992). The terms of the members elected in 1990 commenced on January 1, 1991.

16. Of the 120 members of the 1991 House, 81 were Democrats and 39 were Republicans, and 105 were white, 14 were black, and 1 was a Native American. The occupations of the members of the 1991 House included attorney, dentist, physician, engineer, accountant, college professor, public school teacher, musician, businessperson, and homemaker. A listing of all 1991 representatives by political party and occupation is attached as Exhibit 3.

17. In 1991 and 1992, Daniel T. Blue, Jr., an African-American male Democrat, was speaker of the House and Marie W. Colton, a white female Democrat, was Speaker Pro Tempore. Speaker Blue remains the Speaker of the House at this time. Representative Blue is the fourth black since Reconstruction to serve as Speaker of a State House. His three predecessors were: Willie Brown, Jr. (California, 1980; K. Leroy Irvis (Pennsylvania, 1977 and 1982); and S. Howard Woodson (New Jersey, 1974).

18. At the time of redistricting in 1981 and 1982, there were 3 blacks serving in the House. After the 1982 redistricting, 11 blacks served in the House in 1983. Thirteen blacks served in the House in 1985 and in 1987; and 14 served in 1989. At the time of redistricting in 1991 and 1992, there were 14 blacks serving in the House. Since

the 1992 elections, 18 blacks have served in the House. Representative H. M. Michaux, Jr., an African-American male, was elected in a multi-member majority white district in Durham County. The other 17 black representatives were elected from single-member majority black districts. The names of the black Representatives serving since 1981 are contained in Exhibit 4.

III. The General Assembly's Redistricting Activities

19. According to the 1980 Decennial Census, North Carolina's population was 5,881,760. According to the 1990 federal decennial census, North Carolina's population had increased to 6,628,637. This increase in population (746,877 persons) entitled North Carolina to an additional seat in the United State House of Representatives, increasing the size of the delegation from 11 to 12.

20. The State of North Carolina has no express constitutional or statutory provisions addressing congressional redistricting. The Constitution of North Carolina requires that its House and Senate districts be as nearly equal in population as possible and consist of contiguous territory. N.C. Const. Art. II, §§ 3 and 5. In 1968, the State Constitution was amended to provide that no county shall be divided in the formation of House and Senate districts. This amendment was readopted in 1970. However, these amendments never received pre-clearance and were objected to by the United States Attorney General in 1981, pursuant to § 5 of the Voting Rights Act.

* * * *

22. Forty of North Carolina's 100 counties are "covered jurisdictions" for purposes of Section 5 preclearance under the Voting Rights Act, 42 U.S.C. § 1973(c). A map and a list of these 40 counties is attached as Exhibit 5.

* * * *

IV. Development and Enactment of the First Congressional Redistricting Plan

24. Redistricting committees were appointed by the President Pro Tem of the Senate and the Speaker of the House to facilitate completion of the General Assembly's redistricting responsibilities.

25. In the Senate, a single Redistricting Committee was established on February 4, 1991, with separate subcommittees established for Legislative redistricting and Congressional redistricting. The full Redistricting Committee had 26 members, of whom 19 were Democrats and 7 were Republicans, and 23 were white and 3 were black. The Congressional Redistricting Subcommittee had 13 members, of whom 9 were Democrats and 4 were Republicans, and 12 were white and 1 was black. A list of the Redistricting Committee and Congressional Redistricting Subcommittee members is attached as Exhibit 6.

26. Sen. Dennis J. Winner, a white male Democrat, was Chairman of the Senate Redistricting Committee and Sen. Austin M. Allran, a white male Republican, was ranking minority member. Sen. Russell G. Walker, a white male Democrat, was Chairman of the Senate Congressional Redistricting Subcommittee, and Sen. William W. Staton, also a white male Democrat, was Vice-Chairman.

27. In the House, two separate redistricting committees were established on March 7, 1991, the Legislative and Local Redistricting Committee and the Congressional Redistricting Committee. The members of these committees were chosen by Speaker Blue, an African-American male Democrat. The Congressional Redistricting Committee had 28 members of whom 19 were Democrats, 8 were Republicans and 1 was Independent, and 22 were white and 6 were black.

28. The co-chairmen of the House Congressional Redistricting Committee were Rep. Milton F. Fitch, Jr., an

African-American male Democrat, Rep. Edward C. Bowen, a white male Democrat, and Rep. R. Samuel Hunt, III, a white male Democrat. The Vice-Chairmen were Rep. Karen E. Gottovi, a white female Democrat, Rep. H. M. Michaux, Jr., an African-American male Democrat, Rep. David E. Redwine, a white male Democrat, and Reps. David T. Flaherty and Larry T. Justus, white male Republicans. A list of the members of the Congressional Redistricting Committee is attached as Exhibit 7.

29. The General Assembly used a redistricting computer software program in preparing and analyzing redistricting plans. The software package purchased by the General Assembly was "Plan 90" by Public Systems Associates.

30. One type of information loaded in the redistricting computer was geographic information contained in TIGER digital map files provided by the U.S. Bureau of the Census. The TIGER files contain digital data describing geographic features, including basic map features, highways, streets, rivers, railroads and political boundaries, which allow a visual display of the geographic features on a computer screen.

31. On February 18, 1991, the General Assembly received the 1990 Census P.L. 94-171 tapes from the U.S. Department of Commerce. The P.L. 94-171 tapes provide census data at the census block level on total population and voting age population by race or national origin and on housing density. In addition, for 48 counties this data is also provided at the precinct level. Precinct level data for 21 additional counties was added to the redistricting system's database by the General Assembly's staff.

32. Voter registration data by race and party as of November, 1990, was also merged with the redistricting system's database.

33. Also loaded in the computer database were election results by precinct for these statewide general elections: (1) the 1990 election between Jesse Helms (R) and Harvey Gantt (D) for United States Senate; (2) the 1988 election between James Gardner (R) and Tony Rand (D) for Lt. Governor; and (3) the 1988 election between Donald Smith (R) and John Lewis (D) for the Court of Appeals.

34. The redistricting computer database did not contain any demographic information concerning income, education, type of employment, health care data, commuter patterns, or any other type of economic, sociological or historical data.

* * * *

39. The Senate Redistricting Committee conducted its hearings between March 1 and March 18, 1991, at Elizabeth City, Greensboro, Asheville, Charlotte, Wilmington and Wilson.

40. Approximately 80 persons attended the Elizabeth City hearing and presentations were made by 11 speakers. Approximately 30 persons attended the Greensboro hearing and presentations were made by 9 speakers. Approximately 50 persons attended the Charlotte hearing and presentations were made by 9 speakers. Approximately 50 persons attended the Asheville hearing and presentations were made by 11 speakers. Approximately 80 persons attended the Wilmington hearing and presentations were made by 15 speakers. Approximately 40 persons attended the Wilson hearing and presentations were made by 11 speakers. Copies of the transcripts for these hearings are located at C-28F-3(a)-(g) and included in Exhibit 200.

41. The House Redistricting Committees conducted hearings between March 21 and April 2, 1991 in Asheville, Gastonia, Statesville, Chapel Hill, Williamston,

Fayetteville, Rocky Mount, Jacksonville and Winston-Salem.

42. Approximately 27 persons attended the Jacksonville hearing and presentations were made by 5 speakers. Approximately 30 persons attended the Rocky Mount hearing and presentations were made by 9 speakers. Approximately 20 persons attended the Winston-Salem hearing and presentations were made by 9 speakers. Approximately 26 persons attended the Fayetteville hearing and presentations were made by 15 speakers. At the Chapel Hill hearing presentations were made by 5 speakers. At the Williamston hearing 13 persons spoke. At the Gastonia hearing presentations were made by 14 speakers. At the Statesville hearing 10 speakers made presentations or presented statements. Approximately 34 persons attended the Asheville hearing and presentations were made by 13 speakers. Copies of the transcripts of these hearings are located at 28F-3(a)(i) and included in Exhibit 200.

43. On April 17, 1991, the Senate Congressional Redistricting Subcommittee and House Congressional Redistricting Committee met jointly and adopted the following criteria to guide the Committees in developing congressional districts:

The Committees responsible for redistricting the twelve congressional seats assigned to North Carolina, assisted by the legislative staff, retained counsel and the North Carolina Attorney General, shall be guided by the following standards in the development of the congressional districts:

- (a) In accordance with the requirements of the Article I, Section 2 of the United States Constitution, congressional districts shall be drawn so as to be as nearly equal in population as practicable—the ideal district population being 552,386.

- (b) In accordance with the Voting Rights Act of 1965, as amended, and the 14th and 15th Amendments to the United States Constitution, the voting rights of racial minorities shall not be abridged or denied in the formation of congressional districts.
- (c) All congressional districts shall be single member districts, as required by 2 U.S.C. § 2c, and shall consist of contiguous territory.
- (d) It is desirable to retain the integrity of precincts. For the purpose of this criterion, precincts shall mean only the voting tabulating districts as demarcated in the General Assembly's automated redistricting system database as of May 1, 1991. This criterion does not apply to counties where voting tabulating districts are not demarcated in the General Assembly's automated redistricting system database on that date.
- (e) Census blocks shall not be divided except to the extent that they were divided in the automated redistricting system database for precinct boundaries or to show previous districts.

* * * *

45. On June 13, 1991, the Senate and House congressional redistricting committees jointly conducted a public hearing in Raleigh at the Legislative Building regarding 1991 CONGRESSIONAL BASE PLANS #1 and #2. Twenty-seven persons made presentations. A copy of the transcript of this hearing is located at C-27R-2 and is included in Exhibit 200. Maps of CONGRESSIONAL BASE PLANS #1 and #2, along with election reports and other data, are included in Exhibit 10.

* * * *

47. On May 29, 1991, the first congressional redistricting plan was presented at a joint meeting of the Senate Congressional Redistricting Subcommittee and House

Congressional Redistricting Committee by the chairmen of those committees. This plan was denominated 1991 CONGRESSIONAL BASE PLAN #1 and contained one majority black district, the First District. On that same date, the Senate subcommittee voted to adopt that plan for purposes of presenting it to a noticed public hearing scheduled for June 13, 1991. A copy of BASE PLAN #1 is located at C-27H-7A (maps) and C-27H-7B (statistics); both maps and statistics are included in Exhibit 10.

48. The House redistricting co-chairmen prepared another Congressional plan denominated as 1991 CONGRESSIONAL BASE PLAN #2, which contained a similar majority black First District and was presented to the House Congressional Redistricting Committee on June 3, 1991.

49. At the June 3 meeting, Representative David Balmer, a white male Republican from Charlotte, presented an alternative plan, BALMER CONGRESS 6.2, which contained two majority-minority districts, of which one was also majority black. A copy of BALMER 6.2 is located at C-27R-4, and is included in Exhibit 10.

50. On June 4, 1991, the House Congressional Redistricting Committee adopted BASE PLAN #2 for presentation at the June 13, 1991, public hearing. A copy of BASE PLAN #2 is located at C-27H-8 and included in Exhibit 10.

* * * *

52. On June 18, 1991, the Senate chairs presented 1991 CONGRESSIONAL BASE PLAN #3 to the Senate Redistricting Committee, which adopted it and sent it to the Senate floor as Senate Bill 16. CONGRESSIONAL BASE PLAN #3 also contained a single majority black First District. On June 20, 1991, a motion, which failed 18 to 31, was made to postpone the plan. Subsequently, that plan passed second reading in the Senate by a vote of 30 to 19. Directly following the passage on second reading,

BASE PLAN #3 passed third reading by a voice vote. Exhibit 11 shows the votes by race and party. The plan was sent to the House and referred to the House Congressional Redistricting Committee. A copy of BASE PLAN #3 is located at C-27H-9 and included in Exhibit 10.

53. On June 20, 1991, the House co-chairmen presented 1991 CONGRESSIONAL BASE PLAN #4 to the House Congressional Redistricting Committee. This plan also contained a single majority black district—the First District. On June 21, 1991, the committee adopted BASE PLAN #4 as a committee substitute for Senate Bill 16. The vote in committee on the plan was 16 for and 7 against. Exhibit 12 shows the votes by race and party. A copy of BASE PLAN #4 is located at C-27H-10 and included in Exhibit 10.

54. At its June 21, 1991, meeting, the House Congressional Redistricting Committee also rejected two plans presented by white Republican committee members Reps. Balmer and Justus. BALMER CONGRESSIONAL-BLOCK LEVEL (a refinement of BALMER 6.2) failed by a vote of 5 to 16. Rep. Justus' plan, which contained one majority black district, was rejected by a vote of 7 to 16. No black legislators or Democrats voted for either of these plans. Exhibit 13 shows these committee votes by race and party. Copies of BALMER CONGRESSIONAL-BLOCK LEVEL and REP. JUSTUS'S CONGRESSIONAL PLAN are included in Exhibit 10.

55. On June 25, 1991, CONGRESSIONAL BASE PLAN #4 passed second reading in the House by a vote of 74 to 33. That same day the House rejected amendments by Reps. Balmer and Justus substituting their plans for BASE PLAN #4. All black representatives present and 68 of 72 Democrats voted for BASE PLAN #4 and against the two Republican amendments. Exhibit 14 shows the roll call votes by race and party. On June 26, 1991, CONGRESSIONAL BASE PLAN #4 passed third reading in

the House by a vote of 80 to 29 and was sent to the Senate. Exhibit 15 shows the roll call vote by race and party.

56. On June 27, 1991, the Senate failed to concur in the House Committee substitute for Senate Bill 16 and rejected CONGRESSIONAL BASE PLAN #4 by a vote of 5 to 39. Exhibit 16 shows the Senate roll call vote by race and party.

57. On June 28, 1991, President Pro Tempore Barnes appointed Senators Winner, Walker, Johnson, Ballance, Cooper and Cochran as the Senate's conferees. Senator Ballance is an African-American and Senator Cochran is a Republican; all the other conferees were white Democrats. On July 2, 1991, House Speaker Blue appointed Representatives Fitch, Bowen, Hunt, Barnes and Buchanan as the House conferees. Rep. Fitch is an African-American and Rep. Buchanan is a white Republican; all other conferees were white Democrats.

58. On July 3, 1991, the Senate and House redistricting chairs presented 1991 CONGRESSIONAL BASE PLAN #5 to the conference committee. A copy of that plan is located at C-27H-14 and included in Exhibit 10. The plan contains a single majority black district, the First District. After making adjustments involving only Stokes and Rockingham Counties, the conference committee approved 1991 CONGRESSIONAL BASE PLAN #6. A copy of BASE PLAN #6 is located at C-27A-2A and 2B and included in Exhibit 10.

59. On July 4, 1991, the Senate approved BASE PLAN #6 by a vote of 29 to 15, with all black Senators and 29 of 33 Democrats present voting in favor of the plan. Exhibit 17 shows the roll call vote by race and party.

60. On July 8, 1991, the House approved BASE PLAN #6 by a vote of 72 to 35. No black representatives and 5 of 72 Democrats voted against BASE PLAN #6. Exhibit 18 shows the vote by race and party.

61. Before the vote on BASE PLAN #6, Rep. Balmer moved the House to suspend its rules to allow consideration of a plan BALMER CONGRESS 7.8, which had been filed as House Bill 1310 that day. BALMER CONGRESS 7.8 contained two majority black districts. Rep. Balmer's motion was defeated by a vote of 39 to 63, with no blacks and 3 of 66 Democrats supporting it. Exhibit 18 shows the roll call vote on BALMER 7.8 by race and party. A copy of BALMER 7.8 is located at C-27R-6 and included in Exhibit 10.

62. Various civil rights groups supported the creation of a second majority-black or majority-minority congressional district during the passage at Chapter 601. However, during Chapter 601's amendment process, no black legislator ever voted for any plan containing more than one majority-black or majority-minority district on the floor of the House or Senate. Authentic copies of newspaper articles discussing this issue are attached as Exhibit 19.

63. On July 9, 1991, CONGRESSIONAL BASE PLAN #6, Senate Bill 16, was ratified by the General Assembly as Chapter 601 of the 1991 Session Laws. This plan contains a single majority black district, the First District. A copy of the plan enacted as Chapter 601, along with its statistical report, is included in Exhibit 10. Copies of the transcripts of the House and Senate proceedings and debates and House and Senate floor debates leading to the enactment of Chapter 601 are included in Exhibit 200.

64. North Carolina submitted its State House redistricting plan to the U.S. Department of Justice for preclearance on August 26, 1991. Chapter 601, the Congressional plan, was submitted on September 28, 1991. The State Senate redistricting plan was submitted on October 3, 1991. The Congressional submission consisted of six notebooks, various large scale maps and computer tapes. That submission was supplemented by the submission of

additional materials at the request of the Department of Justice throughout October, November and December. The preclearance submissions include a legislative history of the redistricting process.

* * * *

66. On August 5, 1991, Rep. David Balmer, a white Republican, wrote John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, regarding Chapter 601. Rep. Balmer enclosed with his letter three plans he had drawn, BALMER CONGRESS 6.2., BALMER CONGRESS 7.8, AND BALMER CONGRESS 8.1. Rep. Balmer had introduced plans 6.2 and 7.8 in the General Assembly. BALMER 8.1 was not drawn until after Chapter 601 was enacted. Rep. Balmer wrote the Department of Justice a nine-page letter on September 27, 1991. Copies of these letters are attached as Exhibits 22 and 23.

67. The parties stipulate to the authenticity of the document attached as Exhibit 25 which is a memorandum to the United States Department of Justice written by Gerry F. Cohen, Legislative Services Director for the North Carolina General Assembly, on behalf of Representative Toby Fitch, Senator Dennis Winner, and House Speaker Daniel T. Blue, Jr. Mr. Cohen prepared this memorandum in response to criticisms of Chapter 601 leveled by the ACLU and other groups as part of the preclearance process. Other comments by the State submitted during the preclearance process for Chapter 601 are found at C-27R and attached as Exhibit 26.

68. An authentic copy of a memo prepared by Gerry Cohen, located at G2-1 of the supplemental submissions to the United States Department of Justice, is attached as Exhibit 24.

69. On October 3, 1991, a delegation of Republican legislators flew to Washington, D.C., accompanied by their legal counsel, Robert Hunter, to meet with U.S.

Department of Justice officials and to object to the state's House, Senate and Congressional redistricting plans. The Representatives who met with staff members of the Voting Section of the Civil Rights Division were Rep. Art Pope, the Republican Joint Caucus Leader; Sen. Robert Shaw, Senate Minority Leader; Sen. Leo Daughtry and Rep. David Balmer. Rep. Pope met with Justice Department staff to object to the House plan; Senators Shaw and Daughtry met with Justice Department staff to object to the Senate plan; and Rep. Balmer met with Justice Department staff to object to the Congressional plan.

70. Democratic state legislators and their legal counsel made two trips to Washington, D.C., for the purpose of supporting preclearance of the enacted plan contained in Chapter 601. On September 30, 1991, Speaker of the House Dan Blue, Sen. Dennis Winner and Rep. Toby Fitch met with staff attorneys in the Voting Section of the Civil Rights Division responsible for reviewing the state's preclearance submission. Counsel accompanying these legislators were Leslie J. Winner, Gerry F. Cohen and Tiare B. Smiley, Special Deputy Attorney General, Special Litigation Division. The legislators expressed their support for Chapter 601.

71. On December 17, 1991, Speaker Blue, Sen. D. Winner, Rep. Fitch, L. Winner and G. Cohen returned to Washington, D.C. to meet with John Dunne, the Assistant Attorney General of the United States for Civil Rights, and staff attorneys responsible for reviewing the state's plans. The meeting was requested by Mr. Dunne. The main thrust of the discussion regarding the state's Congressional plan was why the state had not adopted a congressional redistricting plan with two majority black districts.

72. The next day, December 18, 1991, the U.S. Department of Justice by letter denied preclearance to Chapter 601, the Congressional plan, as well as to the

Senate and House redistricting plans. An authentic copy of the letter interposing an objection to the plans is attached as Exhibit 27.

73. The Department of Justice's decision was widely criticized by Democratic legislators and Democratic Congressmen. Authentic copies of letters written by Congressmen Lancaster, Neal, Valentine, Price and Hefner to Senate President Pro Tem Barnes and House Speaker Blue criticizing the Department of Justice's decision and urging that the General Assembly appeal that decision are attached as Exhibit 20. Authentic copies of newspaper articles published during this period are attached as Exhibit 198. Some Republican legislators and Republican Congressmen urged the creation of two majority-minority districts and that the Department of Justice decision not be appealed. See transcript of January 8, 1992 public hearing, contained in Exhibit 200 at pp. 594-96.

V. Development and Enactment of the Second Congressional Redistricting Plan

74. On December 20, 1991, Governor James G. Martin issued a proclamation calling for a special session of the General Assembly to revise the state's redistricting plans and to postpone the filing period for candidates established by statute, N.C. Gen. Stat. § 163-101.

* * * *

78. Authentic copies of newspaper articles published in late December, 1991, and early January, 1992, containing statements by House Speaker Blue, an African-American male Democrat, are attached as Exhibit 29.

79. Authentic copies of newspaper articles published in late December, 1991, and January, 1992, containing statements by House Congressional Redistricting co-chair Toby Fitch, an African-American male Democrat, are attached as Exhibit 30.

80. Authentic copies of newspaper articles published in late December, 1991, and January, 1992, containing statements by Representative Mickey Michaux, an African-American male Democrat, are attached as Exhibit 31.

81. The General Assembly convened on December 30, 1991[.]

* * * *

83. After announcing a public hearing regarding the congressional redistricting plan to be held at 3:00 p.m. on January 8, 1992, and the schedule of redistricting meetings for the congressional redistricting committees, the General Assembly adjourned until January 13, 1992.

84. A public hearing was conducted by the House and Senate Committees in the Legislative Building on January 8, 1992. A transcript of this hearing is located at 2C-28F-2. A copy of this transcript is included in Exhibit 200.

85. At the January 8 hearing, Mary Peeler, Executive Director of the North Carolina NAACP, presented an alternative plan on behalf of the NAACP. This plan was developed in December, 1991 at the request of Rep. Thomas Hardaway, an African-American Democrat, and was known as OPTIMUM II-ZERO. A copy of OPTIMUM II-ZERO is included in Exhibit 10. Rep. Hardaway's plan was developed from CONGRESSIONAL BALMER 8.1. Rep. Hardaway provided the plan to John Merritt, an aide to Congressman Rose. Mr. Merritt made modifications to this plan with assistance from the National Committee for an Effective Congress and the advice of Democratic Congressmen. The NCEC's data base included results of Congressional elections. This data was not included in the State's computer data base. Mr. Merritt believed that this plan would satisfy the Department of Justice's objections to Chapter 601 and protect Congressman Rose's district by creating a second majority-minority district roughly along I-85, well to the west of

Congressman Rose's district. In January, 1992, Merritt shared the plan with the North Carolina NAACP, which decided to present the plan at the public hearing.

* * * *

89. On the weekend of January 18-19, 1992, the Democratic leadership of the House Congressional Redistricting Committee released 1992 CONGRESSIONAL BASE PLAN #7 and the Democratic leadership of the Senate Congressional Redistricting Subcommittee released 1992 CONGRESSIONAL BASE PLAN #8. Both plans were variations of the plan presented by Mary Peeler at the January 8, 1992, public hearing, featuring two majority black districts. Copies of these plans are located at 2C/27H-2 and 3 and included in Exhibit 10.

90. On January 21 and 22, 1992, the House Congressional Redistricting Committee met to discuss BASE PLAN #7. The Committee also discussed Rep. Justus' plan and received a plan from Rep. Flaherty, a member of the Committee, called REP. FLAHERTY'S CONGRESS PLAN, which contained two majority black districts and what he described as a minority-influence district which combined African-Americans and Lumbee Indians. A copy of that plan is located at 2C/27R-4 and included in Exhibit 10.

91. The Senate Congressional Redistricting Subcommittee also met on January 22, 1992, and decided to postpone any action until the House had passed a new plan.

92. The House Congressional Redistricting Committee met on January 23, 1992, and the Committee Co-chairmen presented 1992 CONGRESSIONAL BASE PLAN #9. This plan made a number of changes to BASE PLAN #7 that had been suggested by Democratic members of the committee. A copy of that plan is located at 2C-27H-4 and included in Exhibit 10. Rep. Decker proposed an amendment designed to keep Forsyth County intact

which was rejected by a vote of 16 to 10. Other amendments, which would have substituted Rep. Flaherty's plan and Rep. Justus' plan were also defeated; the Flaherty plan by a vote of 8 to 17; and the Justus plan by a vote of 9 to 16. No black legislators and only one Democrat voted for either of these plans. An amendment was proposed by Rep. Walter B. Jones, Jr., a white male Democrat, which moved four precincts in Pitt County out of the Second District and into the First District and moved three precincts in Edgecombe County from the First District to the Second District. The Jones amendment was adopted at the meeting by a vote of 18 to 9. This amendment had the effect of moving the residence of Rep. Jones and his father, Congressman Walter B. Jones, Sr., from the Second District to the First District. This amendment corresponded with Chapter 601, which also included Congressman Jones in the proposed majority black First District. BASE PLAN #9, as amended, became 1992 CONGRESSIONAL BASE PLAN #10, which was approved by the committee as a Committee Substitute to House Bill 3 to present on the House floor by a vote of 18 to 8. Exhibit 35 shows the committee votes by race and party.

93. On the House floor, on January 23, 1992, Reps. Flaherty and Justus offered the same amendments they had offered in committee. The amendments were defeat [sic] 40 to 71 and 35 to 72, respectively. All black and Native American representatives voted against the Flaherty amendment. No black or Native American representative voted for the Justus amendment (four black representatives did not vote). An amendment was also offered by Rep. James P. Green, Sr., an African-American Democrat, that would have reversed Rep. Jones' successful committee amendment involving the Pitt and Edgecombe precincts and made small changes in Warren and Halifax Counties. The amendment was defeated by a voice vote after being opposed by Committee Co-chairman Fitch. BASE PLAN #10 then passed

second reading by a vote of 72 to 40 and third reading by a vote of 72 to 39. All black and Native American representatives voted for the bill on second reading, and, except for one black House member not recorded as voting, the same was true on third reading. Exhibit 35 shows the roll call votes on the House floor by race and party. The plan was then sent to the Senate.

94. The Senate Redistricting Subcommittee met on January 24, 1992, to consider BASE PLAN #10 (HB3). An amendment was offered by Sen. Leo Daughtry, a white Republican, identical to the amendment Rep. Flaherty had offered in the House, and was defeated by a voice vote. No black Senators voted for this amendment. The bill was given a favorable report and went to the Senate floor that same day. On the floor of the Senate, BASE PLAN #10 passed second reading by a roll call vote of 29 to 17 with all five black Senators voting for the bill. Exhibit 36 shows the roll call vote by race and party. The plan then passed on third reading by a voice vote.

95. BASE PLAN #10, House Bill 3, was ratified as Chapter 7 of the 1991 Extra Session Laws on January 24, 1992. []

* * * *

96. North Carolina submitted its Congressional redistricting plan, Chapter 7, to the U.S. Department of Justice for preclearance on January 28, 1992. []

* * * *

98. By letter dated February 6, 1992, the U.S. Department of Justice precleared Chapter 7. []

* * * *

100. An authentic copy of an article written by House Speaker Daniel Blue, Jr., and sent to all North Carolina daily newspapers after Chapter 7's preclearance is attached as Exhibit 41.

VI. Comparison of Congressional Districting Plans

101. The Congressional districting plan in effect from 1982 to 1992 divided four (4) counties into two separate Congressional districts. It divided no townships.

102. Chapter 601 divided 34 counties, 12 precincts, and two townships into two separate Congressional districts.

103. Chapter 7 divided a total of 43 counties. Of these, 36 are divided among two Congressional districts, and 7 are divided among three congressional districts. Precinct-level information is available for 69 of North Carolina's 100 counties. In these 69 counties, Chapter 7 divided 80 precincts into separate Congressional districts. Two of these precincts are divided into three Congressional districts (Chambersburg precinct in Iredell County and a precinct in Davidson County). One of the portions of the precinct in Davidson County that was divided into a third Congressional District had no residents living in it.

104. Chapter 601 contained a single majority black district, the First District. Blacks comprised 52.18% of the voting age population and 51.34% of the registered voters in Chapter 601's First District.

105. Chapter 7 contains two majority-black districts, the First and the Twelfth. The First District has a black voting age population of 53.40% and a black registered voter population of 52.41%. The Twelfth District has a black voting age population of 53.34% and a black registered voter population of 54.71%.

* * * *

108. Of the 40 North Carolina counties covered under Section 5 of the Voting Rights Act, the following 16 are not included in Chapter 7's First or Twelfth Districts: Jackson, Cleveland, Anson, Union, Scotland, Robeson, Hoke, Harnett, Lee, Onslow, Franklin, Camden, Granville, Person, Caswell, and Rockingham.

109. Of the 40 North Carolina counties covered by Section 5 of the Voting Rights Act, the following 8 counties are entirely included within the First District: Perquimans, Gates, Chowan, Hertford, Bertie, Washington, Northampton, and Greene. Of the 40 North Carolina counties covered by Section 5 of the Voting Rights Act, portions of the following 14 counties are included in the First District: Bladen, Cumberland, Craven, Lenoir, Wilson, Pitt, Beaufort, Edgecombe, Nash, Vance, Halifax, Martin, Pasquotank and Wayne.

110. Of the 40 North Carolina counties covered by Section 5 of the Voting Rights Act, none is entirely included within the Twelfth District. Of the 40 North Carolina counties covered by Section 5 of the Voting Rights Act, portions of the following two counties are included in the Twelfth District: Gaston, Guilford.

111. Of the 60 North Carolina counties which are not covered by Section 5 of the Voting Rights Act, the following six counties are included, in whole or in part, in the First District: Pender, Duplin, Columbus, New Hanover, Jones, and Warren. Of the 60 North Carolina counties which are not covered by Section 5 of the Voting Rights Act, the following eight counties are included in part in the Twelfth District: Mecklenburg, Iredell, Rowan, Davidson, Forsyth, Alamance, Orange, and Durham.

112. Of the 552,386 citizens who live in the First District, 80,218, or approximately 14.5%, reside in counties which are not covered by Section 5 of the Voting Rights Act. Of the 552,386 citizens who live in the Twelfth District, 405,150, or approximately 73.4%, reside in counties which are not covered by Section 5 of the Voting Rights Act.

113. All of North Carolina is covered by Section 2 of the Voting Rights Act.

VII. Geographic, Demographic and Electoral Information

* * *

118. According to the 1990 Decennial Census, North Carolina's total population in 1990 was 6,628,637. Of these persons, 5,008,491 (75.6%) were white, 1,456,323 (22%) were black, 80,135 (1.2%) were American Indian, 52,166 (0.7%) were Asian, and 31,502 (0.4%) were of other races. The statistics on American Indians include members of the Cherokee, Haliwa, and Lumbee tribes.

119. According to the 1990 Census, North Carolina's total voting age population was 5,022,488. Of these persons, 3,902,539 (77.7%) were white, 1,007,856 (20.0%) were black, 53,649 (1%) were American Indian, 36,824 (0.7%) were Asian and 21,620 (0.4%) were of other races. The statistics on American Indians include members of the Cherokee, Haliwa, and Lumbee tribes.

* * *

121. Basic demographic and socio-economic data for each of North Carolina's 1992 Congressional Districts was issued by the Bureau of the Census in January, 1993 in a publication entitled "Population and Housing Characteristics for Congressional Districts of the 103rd Congress—North Carolina." This data is also contained on computer tapes. For purposes of these proceedings the parties stipulate to the accuracy of that data. The parties further stipulate that this publication and data was not available to the General Assembly during the passage of Chapter 601 or Chapter 7.

122. Basic demographic and socio-economic data for each of North Carolina's 1982 congressional Districts was issued by the Bureau of the Census in March, 1983 in a publication entitled "Census of Population and Housing, Congressional Districts of the 98th Congress — North Carolina." For purposes of these proceedings the parties stipulate to the accuracy of that data. The parties further stipulate that this information was not loaded into

the State's computer system for use during the passage of Chapter 601 or Chapter 7.

123. According to the 1992 North Carolina Agricultural Statistics published by The North Carolina Department of Agriculture:

a. N.C. is ranked 10th nationally in farm cash receipts. Part of 8 of the following top 10 counties in cash receipts are in the First District: Pitt, Wilson, Nash, Columbus, Wayne, Duplin, and Halifax.

b. N.C. is ranked 1st nationally in total tobacco production. Part of 5 of the following top 10 counties in tobacco production are in the First District: Pitt, Nash, Columbus, Wilson, and Wayne.

c. N.C. is ranked 15th nationally in corn for grain. All or part of 7 of the following top 10 counties in corn for grain are in the First District: Hyde, Beaufort, Duplin, Pitt, Bertie, Columbus, and Wayne. Of these counties, only Bertie is totally encompassed by the First District.

d. N.C. is ranked 1st nationally in sweet potatoes. Part of 7 of the following top 10 counties in sweet potato production are in the First District: Nash, Wilson, Columbus, Edgecombe, Pender, Duplin and Wayne.

e. N.C. is ranked 9th nationally in cotton production. All or part of 8 of the following top 10 counties in cotton production are in the First District: Halifax, Northampton, Wayne, Edgecombe, Bertie, Pitt, Greene, and Lenoir. Of these counties, only Northampton, Bertie and Greene are entirely encompassed by the First District.

f. N.C. is ranked 4th nationally in peanut production. All or part of all 10 of the following top 10 counties in peanut production are in the First District: Northampton, Halifax, Bertie, Martin, Edgecombe, Hertford, Gates, Chowan, Pitt and Bladen.

Of these counties, only Northampton, Bertie, Hertford, Gates and Chowan are entirely encompassed by the First District.

g. N.C. is ranked 6th nationally in number of hogs on farms. All or part of 7 of the following top 10 counties in hog production are in the First District: Duplin, Greene, Wayne, Bladen, Pitt, Washington and Lenoir. Of these counties, only Green is encompassed by the First District.

h. Of the 20 counties listed in paragraphs a-g, the following 6 counties are covered by Section 5 of the Voting Rights Act and are entirely encompassed b[y] the First District: Bertie, Northampton, Greene, Hertford, Gates, and Chowan.

i. Of the 20 counties listed in paragraphs a-g, the following 9 counties are covered by Section 5 of the Voting Rights Act and are partially encompassed by the First District: Pitt, Nash, Wayne, Halifax, Beaufort, Edgecombe, Lenoir, Martin and Bladen.

j. Of the 20 counties listed in paragraphs a-g, the following 5 counties are not covered by Section 5 of the Voting Rights Act and are partially encompassed by the First District: Wilson, Columbus, Duplin, Hyde, and Pender.

* * * *

125. In 1968, Eva Clayton, an African-American candidate, ran for Congress in the Second District. She was defeated in the Democratic primary by L. H. Fountain, a white incumbent. In 1972, Howard Lee, an African-American candidate, ran for Congress in the Second District. He was defeated in the Democratic primary by L. H. Fountain, a white incumbent.

126. In 1982, Mickey Michaux, an African-American candidate, received 48.7% of the vote in the first Democratic primary. Under the state law in effect at the

time, over 50% was required to win a primary election. In 1982, Mr. Michaux lost the second primary to Tim Valentine, a white Democrat. In 1984, Kenneth Spaulding, an African-American candidate, ran for Congress in the Second District, while Howard Lee and John Winters, Jr., both of whom were black candidates, ran for Congress in the Fourth District. All three black candidates were defeated by white incumbents.

127. In 1989, the General Assembly passed a law providing that a 40% plurality in any primary election would be sufficient for the party nomination. This law was intended to facilitate the nomination of minority candidates. This law became effective for the 1990 elections. See G.S. § 163-111.

128. In 1990, no black candidates ran for Congress.

* * *

134. On July 29, 1981, the General Assembly enacted a congressional redistricting plan for congressional elections beginning in 1982. 1981 N.C. Sess. Laws ch. 894. This plan was submitted to the United States Department of Justice for preclearance pursuant to Section 5 of the Voting Rights Act. By letter dated December 7, 1981, the Department of Justice denied preclearance. On February 11, 1982, the General Assembly enacted a revised plan. 1981 N.C. Sess. Laws ch. 7 (1982 Extra Session). By letter dated March 11, 1982, the Department of Justice precleared the revised plan. Copies of Chapter 894, the December 7, 1981 letter denying preclearance, Chapter 7 and the March 11, 1982 letter granting preclearance are attached as Exhibit 195.

135. As of January 1989, out of 170 state legislators in North Carolina, 15 (8.8 percent) were black.

136. North Carolina's Democratic primaries are closed. North Carolina's Republican primaries were opened to unaffiliated voters in 1988.

* * *

JA-68

Exhibit 20

[Letterhead of Congressman Tim Valentine, House of Representatives
Washington, D.C. 20515]

December 23, 1991

The Honorable Daniel T. Blue, Jr.
Speaker of the House
State Legislative Building
Room 2317
Raleigh, NC 27611

Dear Mr. Speaker:

I am writing in connection with the Congressional redistricting process in light of the recent action by the U.S. Department of Justice.

In my view, the General Assembly acted in good faith and made every effort to comply with applicable laws and protect the rights and interests of minority voters in drawing new Congressional districts for North Carolina. Under the plan approved by the General Assembly, minority influence is maximized in both the minority majority district and all other Congressional districts.

Based on the information that I have reviewed, further concentrating minority citizens into two minority majority districts would likely have the effect of significantly ~~diluting~~ minority influence in virtually all other districts. For that reason, I believe that this matter should now be pursued in the federal courts through an immediate and expedited effort to seek a declaratory judgment that the Congressional redistricting plan previously adopted has neither the purpose nor the effort of discriminating on the basis of race or color.

I appreciate the efforts already made by the General Assembly as well as your consideration of this request.

Cordially,

/s/ Tim Valentine
Tim Valentine

TV:en

Exhibit 20 (Cont'd)

[Letterhead of Congressman H. Martin Lancaster,
Longworth Office Building, Washington, D.C. 20515]

December 20, 1991

Hon. Henson Barnes
Speaker Pro Tem
North Carolina Senate
Raleigh, North Carolina 27611

Dear Senator Barnes:

My colleagues in Congress and I know that the General Assembly made a good faith effort to draw Congressional District lines in a manner to maximize the influence of minority voters in not only a minority majority district, but in all other districts as well. We believe that further concentration of minority voters in a second minority majority district will significantly dilute their influence in many, if not all districts. Therefore, I join my Congressional colleagues in respectfully requesting that immediate and expedited legal action be taken in the federal courts to seek a declaratory judgment that the Congressional redistricting plan previously adopted has neither the purpose nor will it have the effect of denying or abridging the right to vote on account of race or color.

Thank you for your prompt attention to this request.

Sincerely,

/s/ H. Martin Lancaster
H. Martin Lancaster
Member of Congress

JA-70

Exhibit 20 (Cont'd)

[Letterhead of Congressman H. Martin Lancaster,
Longworth Office Building, Washington, D.C. 20515]

December 20, 1991

Hon. Dan Blue, Jr.
Speaker
North Carolina House of Representatives
Room 2317
Raleigh, North Carolina

Dear Speaker Blue:

My colleagues in Congress and I know that the General Assembly made a good faith effort to draw Congressional District lines in a manner to maximize the influence of minority voters in not only a minority majority district, but in all other districts as well. We believe that further concentration of minority voters in a second minority majority district will significantly dilute their influence in many, if not all districts. Therefore, I join my Congressional colleagues in respectfully requesting that immediate and expedited legal action be taken in the federal courts to seek a declaratory judgment that the Congressional redistricting plan previously adopted has neither the purpose nor will it have the effect of denying or abridging the right to vote on account of race or color.

Thank you for your prompt attention to this request.

Sincerely,

/s/ H. Martin Lancaster
H. Martin Lancaster
Member of Congress

JA-71

Exhibit 20 (Cont'd)

[Letterhead of Congressman David Price, House of Representatives
Washington, D.C. 20515]

December 23, 1991

Senator Henson Barnes
Speaker Pro Tem
North Carolina State Senate
2017 Legislative Office Building
Raleigh, North Carolina 27611

Dear Senator Barnes:

I am writing to express my concern about the recent action of the U.S. Department of Justice in objecting to the congressional redistricting plan adopted by the General Assembly in July. Even though the Department acknowledges that "the needless packing of minority constituents into a minimal number of districts" is a primary consideration for rejecting plans under the Voting Rights Act, their suggestion of a second majority-minority district appears to be in direct contradiction to such a consideration.

Creating a second majority-minority district would seriously dilute the influence of minority voters in a number of other districts. This would reduce their ability in those districts to choose representatives who reflect the interests and concerns of minority voters. I believe this would be a step backward in the fight to insure voting rights for all our citizens.

I request that you and your colleagues in the legislature carefully review your options. I believe that it would be appropriate to seek immediate and expedited action in the United States District Court for a declaratory judgment that the congressional redistricting plan has neither the purpose nor will it have the effect of denying or abridging the right to vote on account of race or color.

JA-72

**Thank you for your consideration of this request and
best wishes for a prosperous and productive New Year.**

Sincerely,

**/s/ David Price
David Price
Member of Congress**

DP:gc

JA-73

Exhibit 20 (Cont'd)

[Letterhead of Congressman Steve Neal, House of Representatives]

December 20, 1991

The Honorable Dan Blue, Jr
Speaker
North Carolina House of Representatives
Raleigh, N.C. 27611

Dear Speaker Blue:

It certainly appears to me that the General Assembly acted in good faith in drawing the Congressional District lines to maximize the influence of minority voters throughout our State. I have to agree with the leadership of the General Assembly that further concentrating minority voters by creating a second minority majority district would significantly weaken their influence in the remaining congressional districts. This would, in effect, violate the purpose of the voting Rights Act Amendments of 1982.

I respectfully urge the General Assembly to immediately exercise its right under the Voting Rights Act Amendments of 1982 to seek a declaratory judgment from the United States District Court that the Congressional redistricting plan adopted by the State does not deny or abridge the right to vote on account of race or color.

Thank you for your consideration

Sincerely,

/s/ Stephen L. Neal
STEPHEN L. NEAL
Member of Congress

JA-74

Exhibit 20 (Cont'd)

[Letterhead of Congressman David Price, House of Representatives
Washington, D.C. 20515]

December 23, 1991

Hon. Daniel T. Blue, Jr.
Speaker
North Carolina House of Representatives
Room 2317
Raleigh, North Carolina 27611

Dear Speaker Blue:

I am writing to express my concern about the recent action of the U.S. Department of Justice in objecting to the congressional redistricting plan adopted by the General Assembly in July. Even though the Department acknowledges that the "needless packing of minority constituents into a minimal number of districts" is a primary consideration for rejecting plans under the Voting Rights Act, their suggestion of a second majority-minority district appears to be in direct contradiction to such a consideration.

Creating a second majority-minority district would seriously dilute the influence of minority voters in a number of other districts. This would reduce their ability in those districts to choose representatives who reflect the interests and concerns of minority voters. I believe this would be a step backward in the fight to insure voting rights for all our citizens.

I request that you and your colleagues in the legislature carefully review your options. I believe that it would be appropriate to seek immediate and expedited action in the United States District Court for a declaratory judgment that the congressional redistricting plan has neither the purpose nor will it have the effect of denying or abridging the right to vote on account of race or color.

JA-75

**Thank you for your consideration of this request and
best wishes for a prosperous and productive New Year.**

Sincerely,

**/s/ David Price
David Price
Member of Congress**

DP:gc

JA-76

Exhibit 20 (Cont'd)

[Letterhead of Congressman V. G. (Bill) Hefner,
House of Representatives, Washington, D.C. 20515]

December 23, 1991

Hon. Hanson Barnes
Speaker Pro-Tem
North Carolina Senate
Raleigh, North Carolina 27611

Dear Senator Barnes:

In the Congressional redistricting plan passed by the General Assembly, I believe every effort was made to draw Congressional district lines in a manner that would maximize the influence of minority voters in not only a minority-majority district, but in all other districts as well.

A further concentration of minority voters in a second minority-majority district will, in my judgment, dilute their influence in most districts.

I hope the General Assembly will undertake legal action in the Federal courts to seek a declaratory judgment that the Congressional redistricting plan as adopted will be upheld.

Thank you for your consideration of this request.

With kindest personal regards, I am

Sincerely,
/s/ Bill Hefner
BILL HEFNER
Member of Congress

BH:mp

JA-77

Exhibit 20 (Cont'd)

[Letterhead of Congressman V. G. (Bill) Hefner,
House of Representatives, Washington, D.C. 20515]

December 23, 1991

Hon. Dan Blue, Jr.
Speaker
N.C. House of Representatives
Raleigh, North Carolina 27611

Dear Speaker Blue:

In the Congressional redistricting plan passed by the General Assembly, I believe every effort was made to draw Congressional district lines in a manner that would maximize the influence of minority voters in not only a minority-majority district, but in all other districts as well.

A further concentration of minority voters in a second minority-majority district will, in my judgment, dilute their influence in most districts.

I hope the General Assembly will undertake legal action in the Federal courts to seek a declaratory judgment that the Congressional redistricting plan as adopted will be upheld.

Thank you for your consideration of this request.

With kindest personal regards, I am

Sincerely,

/s/ Bill Hefner
BILL HEFNER
Member of Congress

BH:mp

JA-78

Exhibit 22

[Letterhead of Rep. David G. Bainer, N.C. House of Representatives,
512 Legislative Office Building, Raleigh, N.C. 27603-5925]

August 5, 1991

Mr. John R. Dunne
Assistant Attorney General
U.S. Department of Justice
Civil Rights Division
Post Office Box 66128
Washington, DC 20035-6128

Dear Mr. Dunne:

I am enclosing copies of Congressional plans that I introduced into the Legislative record as bills and alternatively as amendments to the final Senate Bill 16 (Conference Base #6) which the Legislature adopted and forwarded to your office for pre-clearance. Each of the plans that I introduced were defeated by Legislative action either on the floor or in the House Congressional Redistricting Committee.

As I pointed out in floor debate several times, the boundary lines of the congressional districts in Conference Base #6 (SB 16) divide black population concentrations in a manner that neutralizes black voting potential in the State. For this and other reasons, I repeatedly warned my fellow Legislators that the Conference Base #6 did not comply with Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Accordingly, I introduced Congressional plans that do comply with Section 5.

Each of these plans has been drawn at precinct level except where block work was necessary to comply with the "one man-one vote" requirement of *Baker v. Carr*, 369 U.S. 186 (1962). As the first page of each plan shows, the total deviation of each plan is between 1 and 2

JA-79

people (North Carolina's population is not equally divisible by 12). Each plan has a page outlining by district total population, registration, and elections history.

As you can see from careful examination of my Congressional plans, there are several ways to create *two* minority (Black or American Indian as protected groups under the Voting Rights Act) Congressional districts in North Carolina. Most of the Counties used to create these minority Congressional districts are Counties subject to Section 5 of the Voting Rights Act. The plans enclosed are three alternative ways to configure North Carolina's 12 Congressional districts to include 2 minority Congressional districts. There are several other ways to draw 2 minority districts from variations of these three alternatives.

It is my understanding that several organizations are planning to file official comments with your department concerning the North Carolina Congressional plan. Therefore, I am just enclosing 3 plans with this cover letter for your review.

If I can supply you with any additional information concerning these Congressional districts, I will be happy to do so.

Sincerely,

/s/ David G. Balmer
David G. Balmer

JA-80

Exhibit 23

[Letterhead of Rep. David G. Balmer, N.C. House of Representatives,
512 Legislative Office Building, Raleigh, N.C. 27603-5925]

September 27, 1991

Mr. John R. Dunne
Assistant Attorney General
U.S. Department of Justice
Civil Rights Division
Post Office Box 66128
Washington, D.C. 20035-6128

RE: Section 5 Comment Letter concerning State of North Carolina's submission of Ratified Senate Bill 16 (Conference Base 6), 1991 Session Laws Chapter 601, redistricting the 12 Congressional Districts allotted to North Carolina in the United States House of Representatives

Dear Mr. Dunne:

I write this letter on behalf of all North Carolinians on the State of North Carolina's submission of Ratified Senate Bill 16 (Conference Base 6), 1991 Session Laws Chapter 601 (hereinafter referred to as the "RATIFIED VERSION"), redistricting the 12 Congressional Districts allotted to North Carolina in the United States House of Representatives. The RATIFIED VERSION was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. On behalf of all the citizens of North Carolina, I urge you to object and not preclear the RATIFIED VERSION because it unfairly discriminates against blacks and American Indians by diluting their voting strength.

I am enclosing copies of Congressional plans that I introduced into the Legislative record as bills and alternatively as amendments to the RATIFIED VERSION. Each of the plans that I introduced were defeated by

Legislative action either on the floor or in the House Congressional Redistricting Committee.

As I pointed out in floor debate several times, the boundary lines of the RATIFIED VERSION divide black and American Indian population concentrations in a manner that neutralizes their voting potential in the State. For this and other reasons, I repeatedly warned my fellow Legislators that the RATIFIED VERSION did not comply with Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Accordingly, I introduced Congressional plans that do comply with Section 5.

Each of the plans I submitted to the Legislative record were drawn at precinct level except where block work was necessary to comply with the "one man-one vote" requirement of *Baker v. Carr*, 369 U.S. 186 (1962). Modifying *Baker v. Carr*, the United States Supreme Court further ruled in *Karcher v. Daggett*, 462 U.S. 725 (1983) that a New Jersey redistricting plan had to make districts identical in population if possible. As the first page of each of my plans shows, the total deviation of each plan is between 1 and 2 people (North Carolina's population is not equally divisible by 12). Each plan has a page outlining by district total population, registration, and elections history.

As you can see from careful examination of my Congressional plans, there are several ways to create two minority (Black or American Indian as protected groups under the Voting Rights Act) Congressional districts in North Carolina. Most of the Counties used to create these minority Congressional districts are counties subject to Section 5 of the Voting Rights Act. The plans enclosed are three alternative ways to configure North Carolina's 12 Congressional districts to include 2 minority Congressional districts. There are several other ways to draw 2 minority districts from variations of these three alternatives.

BALMER CONGRESS VERSION 6.2

I began meeting with Mr. Bill Gilkeson of the Legislature's Research Division staff in early March 1991 about the concept of drawing a minority Congressional district from the black neighborhoods of Charlotte to the black neighborhoods of Wilmington including all pockets of black and American Indians in between these two cities. In fact, I used census data to manually draw a congressional district that was 54% minority and prepared a memorandum on my own personal computer outlining which precincts and townships should be included in this district. I gave copies of this memorandum to House Speaker Daniel T. Blue, Jr. (Democrat—Wake County), Co-Chairmen of House Redistricting Committee Milton F. Fitch, Jr. (Democrat—Wilson County), Rector Samuel Hunt, III (Democrat—Alamance County), Edward C. Bowen (Democrat—Sampson County) and Chairman of the Senate Redistricting Committee, Senator Dennis Winner (Democrat—Buncombe County).

I released copies of this memorandum to several other black Legislators including Rep. H. M. "Mickey" Michaux, Jr. (Democrat—Durham County), Rep. Thomas Hardaway (Democrat—Halifax County), Rep. W. "Pete" Cunningham (Democrat—Mecklenburg County), and Senator James Richardson (Democrat—Mecklenburg County). I also gave copies of this memorandum to the Legislative staff, specifically Gerry Cohen, Director of Legislative Drafting, Linwood Jones and Bill Gilkeson from the Research Division.

All of the Legislators mentioned above remarked as to the length of the district stretching from Charlotte to Wilmington (about 200 miles). Of course, my proposed Charlotte to Wilmington district is not nearly as long as District 2 or 12 under the RATIFIED VERSION.

The N.C. General Assembly's Mapping and Redistricting Information System (MARIS) computer was not

loaded with all the census data until April 26, 1991. The Legislative staff from the Bill Drafting Division and Research Division were the first people trained on this system, and their training session began April 26, 1991. Mr. Cohen, Mr. Jones and Mr. Gilkeson were trained and prepared to use this system as of April 29, 1991. At first, Speaker Blue had ruled that only members of the Redistricting Committee would be allowed to take MARIS training. Speaker Blue later relaxed the rules on MARIS training to open it up to all Legislators. I was not trained and using the MARIS computer until June 4, 1991, the day after my first presentation of BALMER CONGRESS 6.2 to the House Congressional Redistricting Committee.

Therefore, up until the time I was trained on June 4, 1991, I had to request that computer work be done through Mr. Gilkeson who had been assigned to investigate my idea of a Charlotte to Wilmington minority district. Speaker Blue established rules as to the priority given to staff computer time that gave all preference to members of the redistricting committees. Mr. Gilkeson had many other computer redistricting assignments from other Legislators, all of whom were on the committee. I requested to be appointed to the redistricting committees, but Speaker Blue did not appoint me.

I met with Mr. Gilkeson almost daily during the month of May to complain to him as to the lack of his progress on my plan. He repeatedly told me that he was being instructed by his superiors to give preference to computer work requested by Congressional Redistricting Committee members. He finally finished my plan, which I named BALMER CONGRESS 6.2., on May 28, 1991.

I held a press conference on May 29, 1991 in the Legislature's Press Conference Room to unveil BALMER CONGRESS 6.2. Eight reporters attended the press conference and the plan received press coverage in several of North Carolina's daily newspapers.

I presented BALMER CONGRESS 6.2 to the House Congressional Redistricting Committee on June 3, 1991 and answered questions of the Committee concerning the plan. On June 4, 1991, the House Congressional Redistricting Committee voted to refuse to allow BALMER CONGRESS 6.2 to be sent to the public hearings phase of the procedure. Instead, the Committee voted to send Congressional Base #2 to the public hearings across the state.

With BALMER CONGRESS 6.2, I began under the premise that I would maintain the concept of a black majority Congressional district in the Northeastern section of North Carolina, since the Democrat Legislators were including this black district in their plans. Nevertheless, the Northeastern black Congressional district (District 2) in BALMER CONGRESS 6.2 strengthens black voting potential in comparison to the Northeastern black district (District 1) in the RATIFIED VERSION. District 2 in BALMER CONGRESS 6.2 is 57.43% black in total all ages population (53.52% black registered voters), and Harvey Gantt (the black Democrat 1990 U.S. Senate candidate who ran against the white Republican Senator Jesse Helms) received 64.35% of the vote in District 2. On the other hand, District 1 in the RATIFIED VERSION is 55.69% black in total all ages population (51.34% black registered voters), and Harvey Gantt received 62.20% of the vote in 1990 in District 1. District 2 in the BALMER CONGRESS 6.2 has a higher black population than District 1 in the RATIFIED VERSION because District 2 includes the black neighborhoods in South Raleigh in Wake County.

In addition to drawing a better black Congressional district in the Northeastern part of North Carolina, in BALMER CONGRESS 6.2 I drew a *second* minority Congressional district that runs along the South Carolina border from Charlotte to Wilmington. The RATIFIED

VERSION has ignored the high concentrations of black and Lumbee Indian populations in Southern North Carolina. District 12 in BALMER CONGRESS 6.2 has been drawn along the South Carolina border area of North Carolina which is included in Districts 3, 7, 8 and 9 under the RATIFIED VERSION. The following chart illustrates how the Democrat majority in the North Carolina Legislature submerged Black and American Indian voting potential in the RATIFIED VERSION when compared to District 12 in BALMER CONGRESS 6.2.

| | <u>BLACK POP.</u> | <u>AMER.IND. POP.</u> | <u>GANTT VOTE</u> |
|----------------------------|-------------------|-----------------------|-------------------|
| <u>BALMER CONGRESS 6.2</u> | | | |
| District 12 | 48.06% | 8.30% | 69.14% |
| <u>RATIFIED VERSION</u> | | | |
| District 3 | 24.46% | 0.52% | 43.63% |
| District 7 | 24.32% | 8.26% | 50.47% |
| District 8 | 24.13% | 1.66% | 44.55% |
| District 9 | 24.98% | 0.37% | 56.69% |

Before the Democrat Legislative majority killed BALMER CONGRESS 6.2 in the House Congressional Redistricting Committee, the Democrats claimed that BALMER CONGRESS 6.2 "packed" all the blacks in North Carolina into two Congressional districts thereby diluting black impact on the other ten districts. In fact on June 26, 1991, I debated Rep. Fitch, Congressional Redistricting Committee Co-Chairman, at Meredith College on Congressional Redistricting. During the debate, he admitted that a second minority Congressional district could be drawn along the South Carolina border, but he felt that would dilute minority voting strength in other congressional districts in the State. The following chart proves that this Democrat charge was simply untrue and completely unsupported by the population data.

**COMPARISON OF NUMBER OF
DISTRICTS WITH MORE THAN
20 PERCENT BLACK POPULATION**

| | <u>Black Population</u> | <u>Gantt Vote</u> |
|-------------------------------------|-------------------------|-------------------|
| <u>BALMER CONGRESS 6.2</u> | | |
| District 1 | 23.55% | 42.71% |
| District 2 | 57.43% | 64.35% |
| District 3 | 20.93% | 50.10% |
| District 6 | 21.45% | 46.33% |
| District 7 | 20.08% | 42.68% |
| District 12 | 48.06% | 69.14% |
| Total Districts more than 20% Black | - 6 | |
| Total Districts carried by Gantt | - 3 | |

| | | |
|--------------------------------|--------|--------|
| <u>RATIFIED VERSION</u> | | |
| District 1 | 55.69% | 62.20% |
| District 2 | 21.91% | 38.81% |
| District 3 | 24.46% | 43.63% |
| District 6 | 25.20% | 47.77% |
| District 7 | 24.32% | 50.47% |
| District 8 | 24.13% | 44.55% |
| District 9 | 24.98% | 56.69% |

Total Districts more than 20% Black - 7
Total Districts carried by Gantt - 3

So when comparing BALMER CONGRESS 6.2 to the RATIFIED VERSION, anyone easily can see that BALMER CONGRESS 6.2 maintains a strong black voting influence on the remaining 10 Congressional districts, and Harvey Gantt carried three Congressional districts under both BALMER CONGRESS 6.2 and the RATIFIED VERSION.

BALMER CONGRESS 7.8
(Balmer Congress 7.4)

BALMER CONGRESS 7.8 was introduced into the Legislative record as House Bill 1310 which was sent to the House Congressional Redistricting Committee where it was never brought up for discussion by the Co-Chairmen of that Committee. BALMER CONGRESS 7.8 is identical to the plan named BALMER CONGRESS 7.4. I introduced House Bill 1310 as BALMER CONGRESS 7.8, but its name in the MARIS Computer remained BALMER CONGRESS 7.4. For the purpose of this comment letter, I will refer to this plan by the name of BALMER CONGRESS 7.8.

I began BALMER CONGRESS 7.8 by drawing on the MARIS computer a black majority Congressional district (District 2) that stretches across Eastern and Southeastern North Carolina (see enclosed map). District 2 has a black all ages population of 53.30% and 54.11% black registered voters. Black registration is higher than black total population because District 2 under this plan includes three military bases where very few people are registered to vote.

District 2 covers Counties included in Districts 1, 2, 3 and 7 under the RATIFIED VERSION. The following chart illustrates how the Democrat majority in the North Carolina Legislature submerged black voting potential in the RATIFIED VERSION when compared to District 2 in BALMER CONGRESS 7.8.

BLACK POP. GANTT VOTE

BALMER CONGRESS 7.8

| | | |
|------------|--------|--------|
| District 2 | 53.30% | 63.56% |
|------------|--------|--------|

RATIFIED VERSION

| | | |
|------------|--------|--------|
| District 1 | 55.69% | 62.20% |
| District 2 | 21.91% | 38.81% |
| District 3 | 24.46% | 43.63% |
| District 7 | 24.32% | 50.47% |

I drew another black majority Congressional district (District 3) in BALMER CONGRESS 7.8 which stretches from the black neighborhoods of Winston-Salem in Forsyth County in the West to Halifax County in the East (see enclosed map). District 3 has a black all ages population of 55.39% and 53.03% black registered voters.

District 3 covers Counties included in Districts 1, 2, 4, 5 and 6 under the RATIFIED VERSION. The following chart illustrates how the Democrat majority in the North Carolina Legislature submerged black voting potential in the RATIFIED VERSION when compared to District 3 in BALMER CONGRESS 7.8.

BLACK POP. GANTT VOTE

BALMER CONGRESS 7.8

| | | |
|------------|--------|--------|
| District 3 | 55.39% | 67.96% |
|------------|--------|--------|

RATIFIED VERSION

| | | |
|------------|--------|--------|
| District 1 | 55.69% | 62.20% |
| District 2 | 21.91% | 38.81% |
| District 4 | 19.65% | 58.16% |
| District 5 | 18.76% | 45.65% |
| District 6 | 25.20% | 47.77% |

BALMER CONGRESS 8.1

BALMER CONGRESS 8.1 was introduced into the Legislative record as a plan submitted to the Co-Chair-

men of the House Congressional Redistricting Committee where it was never brought up for discussion. I began BALMER CONGRESS 8.1 by drawing on the MARIS computer a black majority Congressional district (District 2) that stretches across Eastern and Southeastern North Carolina (see enclosed map). District 2 has a black all ages population of 58.47% and 55.00% black registered voters.

District 2 in BALMER CONGRESS 8.1 covers Counties included in Districts 1, 2, 3, 4 and 7 under the RATIFIED VERSION. The following chart illustrates how the Democrat majority in the North Carolina Legislature submerged black voting potential in the RATIFIED VERSION when compared to District 2 in BALMER CONGRESS 8.1.

| | BLACK POP. | GANTT VOTE |
|----------------------------|------------|------------|
| <u>BALMER CONGRESS 8.1</u> | | |
| District 2 | 58.47% | 63.82% |
| <u>RATIFIED VERSION</u> | | |
| District 1 | 55.69% | 62.20% |
| District 2 | 21.91% | 38.81% |
| District 3 | 24.46% | 43.63% |
| District 4 | 19.65% | 58.16% |
| District 7 | 24.32% | 50.47% |

I drew another black majority Congressional District (District 12) in BALMER CONGRESS 8.1 which stretches from the black neighborhoods of Charlotte to the black neighborhoods of Durham (see enclosed map). District 12 has a black all ages population of 56.77% and 55.67% black registered voters.

District 12 covers Counties included in Districts 2, 5, 6, 8, 9 and 12 under the RATIFIED VERSION. The following chart illustrates how the Democrat majority in the North Carolina Legislature submerged black voting potential in the RATIFIED VERSION when compared to District 12 in BALMER CONGRESS 8.1.

BLACK POP. - GANTT VOTE

BALMER CONGRESS 8.1

| | | |
|-------------|--------|--------|
| District 12 | 56.77% | 71.61% |
|-------------|--------|--------|

RATIFIED VERSION

| | | |
|-------------|--------|--------|
| District 2 | 21.91% | 38.81% |
| District 5 | 18.76% | 45.65% |
| District 6 | 25.20% | 47.77% |
| District 8 | 24.13% | 44.55% |
| District 9 | 24.98% | 56.69% |
| District 12 | 8.25% | 32.75% |

Enclosed are copies of each of the three plans (BALMER CONGRESS 6.2, BALMER CONGRESS 7.8 AND BALMER CONGRESS 8.1) which I introduced into the Legislative record.

The boundary lines of the RATIFIED VERSION divide black and American Indian population concentrations in a manner that neutralizes their voting potential in the State. For this and other reasons, the RATIFIED VERSION does not comply with Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Accordingly, I urge you to not preclear the RATIFIED VERSION because it unfairly discriminates against blacks and American Indians by diluting their voting strength.

If I can supply you with any additional information concerning these Congressional plans, I will be happy to do so.

Respectfully,

/s/ David G. Balmer
Rep. David G. Balmer

JA-91

Exhibit 24

[Letterhead of North Carolina General Assembly,
300 N. Salisbury Street, Raleigh, N. C. 27603-5925]

November 3, 1991

MEMORANDUM

TO: United States Department of Justice
FROM: Gerry F. Cohen,
Director of Legislative Drafting
SUBJECT: Section 5 Reply: Question G2

In your letter of October 18, 1991, you asked for instructions to staff, whether verbal or written, regarding development of the proposed plans, and to provide notes or memorandum [sic] used by or between committee members or staff.

This document G2-1 deals with my response. Attached are documents G2-2, that of Leslie Winner, G2-3, that of Linwood Jones, Sara Kamprath, Bill Gilkeson, and Carolyn Johnson, and G2-4, that of Giles Perry.

This memorandum deals with my instructions, notes or memorandum [sic]. I received no written instructions. All of my instructions were oral. A summary of oral instructions follows, then a listing of attached memorandum [sic]. (I have no notes)

CONGRESSIONAL: At the time I was trained on the computer system, Representative Fitch asked me to develop a minority Congressional district. Having worked as a volunteer in the congressional campaigns in 1972: Second District Howard Lee (B), 1982: Second District H.M. Michaux (B), 1984: Second District Kenneth Spaulding (B), 1986: Fourth District Howard Lee (B), and having run for political office four times myself, I considered myself knowledgeable concerning electoral politics and especially black electoral politics at the Congressional

level in North Carolina. My instructions were to insure that a black was electable, by having at least 50% of the registered voters being black, but without packing the district with more black voters than was necessary to ensure that minority voters had an equal opportunity to elect a candidate of their choice in the district. My initial conception of the district was based largely on a modification of the existing Second District, but after discussing this with Representative Fitch, he instructed me to remove Person and Caswell Counties from the proposed district and instead move the district into Jones and Craven Counties. These Counties (Craven and Jones) had historically been part of the Second District which elected black Congressmen in the 19th century. I was asked to develop the district so that Rep. Valentine was not in the district. I understood from the committee chairs that Rep. Jones would likely retire, and the district should be an open seat so that a black candidate would not have to run against a white incumbent.

During the development of Congressional Plans 1-6, the boundaries of the proposed First District changed constantly, but always around the same general core, and my instructions were to keep the district such that a black would be elected, which I did.

I was also instructed by Senator Walker to have the Fourth District consist primarily of Wake, Orange and Chatham Counties, with part of Franklin if at all possible.

I worked with Senators Winner and Walker and the House co-chairs after they had developed the outline of Congressional Base #1 to bring the population deviation to within about ± 200 . I also was instructed in the later plans to divide the minimum number of precincts possible to bring the deviation down to ± 1 person to comply with *Karcher v. Daggett*, and did so by dividing 11 precincts in several of the plans.

At the beginning of the conference process, I was instructed by the House conferees to add Harlowe precinct, a predominantly black precinct in Craven County, to the first District, which the Senate accepted.

Besides the above, I acted as a computer operator, moving precincts and counties at the direct instruction of the co-chairs, without any discretion.

* * * *

JA-94

Exhibit 25

[Letterhead of North Carolina General Assembly,
300 N. Salisbury Street, Raleigh, N. C. 27603-5925]

October 14, 1991

MEMORANDUM

TO: United States Department of Justice

FROM: Gerry F. Cohen,
Director of Legislative Drafting

SUBJECT: North Carolina submittals 91-3184, 91-2724,
91-3178;
Response to ACLU/Kathleen Wilde comment
Response to Representative Herman Gist
comment
Response to Representative David Balmer
comment
Response to Commissioner Cary Allred
comment
Response to Rockingham Co. Bd. of
Commissioners comment

This memorandum primarily answers the comments made in the September 25, 1991 comment of the American Civil Liberties Union Foundation (ACLU) signed by Kathleen Wilde, concerning the North Carolina House (91-3184), Senate (91-3178) and Congressional (91-2724) submittals. It also answers the August 23, 1991 comment of Representative Herman Gist concerning the House submittal, the August 5, 1991 comment of Representative David Balmer concerning the Congressional submittal, the September 9, 1991 comment of Commissioner Cary Allred concerning the Senate submittal, and the July 18, 1991 comment of the Rockingham County Board of Commissioners concerning the House submittal. Each major point in the comments is paraphrased (with page number citation) and replied to. Each comment and answer begins on a new page. Exhibits appear at the

end. Paraphrased comments are in regular typeface, our replies are in bold.

This memorandum is submitted on behalf of Representative Toby Fitch, co-chair of the House redistricting committees, Senator Dennis Winner, chair of the Senate Redistricting Committee, and House Speaker Daniel T. Blue, all of whom met with Department of Justice staff on September 30, 1991 concerning the three plans.

¶1) With respect to the racially discriminatory plans . . . I strongly urge you to interpose an objection under Section 5 (ACLU page 1)

Since there is no allegation as to Section 5 covered counties that our plans are retrogressive, the Department of Justice must focus on whether they have a discriminatory purpose, i.e. a purpose to diminish or limit the ability of black voters to participate in and to elect representatives of their choice, or that there is a clear violation of Section 2. As to the latter, the burden of proof is on the opponents to demonstrate it, and the violation must be clear, not merely arguable. See 28 CFR 51.55(b)(2).

. . . .

¶15) Each of the three redistricting plans clearly violate Section 2 . . . As recently as 1984, a three-judge federal court held, and in 1986 the Supreme Court affirmed . . . [list of findings] . . . Each of these factors clearly exist today . . . Leslie Winner advised the committee that her "review of the data over the decade unfortunately suggests that racially polarized voting in North Carolina is not decreasing . . . (ACLU page 5-6)

It is important to note that the Gingles trial was in August 1983, almost ten years ago; therefore findings about conditions then cannot be assumed to be true today. Those findings were based on statistics

from 1978 through 1982. Also, the geographic areas in question in Gingles, with the exception of Senate District 2 and House District 8 as they existed in 1980, were different from the areas in question here . . . there is no evidence with regard to Guilford, Cumberland, the Southeast, the Anson to Robeson Area, or the Orange, Alamance, Rockingham area.

Importantly:

- a) With regard to voter registration, the court found that the State had already taken steps to facilitate black registration as of 1983, but there had not then been time for that to bear fruit, by now there clearly has. Exhibit 2 to this memorandum is an Article from North Carolina Insight magazine, June, 1991, pages 32-33, where it is noted "Voter registration in North Carolina saw another big jump from minority registration increases, particularly in 1984 and 1980". 1984 was the Helms-Hunt Senate race, 1984 and 1988 were the Jesse Jackson presidential bid, and 1990 was the Gantt-Helms Senate race. North Carolina has made many changes in registration laws, and by the end of 1990, 63% of eligible blacks were registered to vote, compared with 68.6% of whites. According to the February 25, 1991 Charlotte Observer, (Exhibit 3) this 5.6% gap compares with a gap of 18.8% in 1980. The gains that the three-judge court had said had not occurred by the time of the 1983 trial have now occurred. This reduction was on account of concerted efforts on the part of the State and minority groups. This closing by 13.3% of the gap not only requires a smaller percentage of minority voters to create an effective black voting majority in a district in North Carolina, it also indicates an end to any discrimination

in voter registration. The Charlotte Observer article indicates that "[i]n almost a quarter of the State's counties, the percentage of registered voters among black adults is higher than the percentage of registered voters among white adults." (Exhibit 3)

North Carolina has permanent voter registration, and voters are only purged for failure to vote in two presidential elections and all elections conducted between those two elections. Thus any person who voted in: (i) the 1988 Presidential election; (ii) the 1990 Gantt-Helms (W) race; (iii) any election in between; (iv) municipal elections in 1991; (v) primary elections in 1992; or (vi) registers to vote between October 10, 1988 and October 10, 1992, will remain eligible to vote through the 1996 presidential election. Voting in any election from the 1992 presidential election through the 1996 presidential election extends eligibility through the 2000 presidential election. The ACLU comment seems to imply that high levels of voter registration and voting in the black community in recent years are to be ignored or disregarded. In fact, such high levels of participation are not only a continuing trend, they continue to make it easier for blacks to participate in the future, refute past histories, and indicate an end to racial discrimination in official election practices. Election events that will spur minority interest will continue to occur, whether it be from minority Presidential candidates like Governor Wilder (B) of Virginia, or the 1992 gubernatorial candidacy of James B. Hunt, Jr., (W) whose 1984 senatorial bid brought out large black registration and turnout. As compared with 1980, black electoral candidacies and

successes have shown a marked increase at the statewide and local level, prompting increased black participation. Indeed, one could argue that packing black voters in districts that are beyond percentages necessary will reduce competition and reduce black turnout. The ACLU seems to imply that higher black percentages in black districts are better. In fact, the General Assembly has enacted three districting plans before you to enhance minority influence.

b) As far as racial appeals are concerned, aside from the racial appeals attributed to Senator Helms in 1990, (ACLU page 7) the ACLU shows no other evidence of them in the past decade since Gingles.

c) As far as polarized voting, the burden of proof is on the ACLU. On page 6, the ACLU quotes statements from Leslie Winner about polarized voting. This quote is taken out of context. Ms. Winner earlier on page 6 had talked about "... a history of racially polarized voting in that area of the State." Ms. Winner was not talking about the Guilford, Mecklenburg, Orange, Rockingham, Forsyth, Wake, Durham, Alamance, Cumberland etc., areas of the State. As an example, see further discussion of voting in Wake County in paragraph 42 of this reply.

* * * *

¶17) Given the presence and persistence of all of these Section [?] evidentiary factors, the only remaining issue under Gingles is whether the black population is sufficiently large and geographically compact to constitute a majority in a single-member district that was not drawn (ACLU page 7) [.]

The ACLU has failed to show how the Gingles findings apply to the districts they cite. Indeed to show the progress in reduction of racially polarized voting in North Carolina, the State used in its calculations of electability the showing of Harvey Gantt for the U.S. Senate campaign in 1990. This statistic is relevant. Evidence shows that the dramatic increase in black voter participation is a continuing, decade long trend.

Where relevant in its comments here, the State will discuss the issue of compactness, since ACLU has correctly noted the importance of that factor. ACLU also states that it is enough that ". . . the black population . . . constitute[s] a majority . . ." (ACLU page 7) Not only must it show that the absence of the district prevents minorities from electing a representative of their choice, it must also show that the districts have an effective black voting majority. They have failed to establish the proposition. When appropriate, this reply will show when it is clearly not the case.

For instance, as to racially polarized voting, to show progress from 1980 to 1990, the State has looked at indicators of white voting for candidate Gantt, as being the best showing on a statewide basis of white support for black candidates. In addition, Democratic candidates for the General Assembly and local offices tend to have a higher percentage vote than for statewide offices, so the presented statistics understate the number of white voters who will vote for a black local candidate. See discussion of evolution of voting for John Baker (B) in Wake County sheriff's race at paragraph 42 of this reply. Most black candidates and nominees in North Carolina are Democrats. In analyzing the districts, the State also looked at the percentage of Democrats who are black. North Carolina is a closed primary state (only

registered Democrats may vote in a Democratic primary), and the percentage of Democrats who are Black is higher than the percentage of all voters who are Black, since on a statewide average over 95% of all blacks registered to vote are registered as Democrats. An effective black voting majority among registered voters in the Democratic party is enough to make a black candidate the nominee, and the Gantt and other statistics used by the State showing whites who will vote for a black Democratic candidate in a general election are relevant to show how blacks can elect representatives of their choice in each minority district created by the General Assembly, many of which are attacked by the ACLU as having too few blacks.

For the purpose of exhibit 6, precincts in 69 counties were analyzed. It was first assumed that 100% of Blacks supported Gantt (to the extent that the percentage was less, the attached statistics understate the percentage of whites that voted for Gantt.) It was then assumed that blacks turned out at the same percentage as whites among those who registered to vote. (The ACLU seems to think that the black turnout was higher, but it also implies that White turnout was boosted by racist appeals, and shows no evidence for either[.]) The total votes in each precinct cast by blacks was then removed using these assumptions. Only precincts with 50% or more of the registered voters being black were even analyzed, as being more likely to result in a statistically accurate analysis.

In the 69 counties, in 165 predominantly white precincts a majority of the whites voted for Gantt, the Black candidate in the general election. In another 178 predominantly white precincts, 40-50% of the whites voted for Gantt. (See exhibit 65)

ACLU indicates that failure to create:

- (1) "majority-black" House districts, or districts with what it alleges are insufficient percentages of blacks, including parts of Durham, Orange, Guilford, Forsyth, New Hanover and Mecklenburg counties;
- (2) "majority-black" Senate districts, or districts with what it alleges are insufficient percentages of blacks, including Forsyth, Durham, Mecklenburg, and Wake counties; and
- (3) an additional "majority-black" Congressional district, including Wake, Guilford, Forsyth, Mecklenburg, New Hanover counties

violates the Voting Rights Act. To show the lack of polarized voting, and effectiveness of black candidates, the statistics below (see Exhibit 7) show for each of these counties the number of predominantly white precincts where Gantt got 50% + and 40-50% of the white vote: These statistics do not even take into account the number of whites in predominantly black precincts who will vote for black candidates:

| COUNTY | # 50% + | # 40-50% |
|-------------|---------|----------|
| DURHAM | 17 | 3 |
| FORSYTH | 7 | 17 |
| GUILFORD | 12 | 26 |
| MECKLENBURG | 25 | 59 |
| NEW HANOVER | 2 | 9 |
| ORANGE | 26 | 2 |
| WAKE | 38 | 28 |

These statistics are used to buttress the State's analysis of each particular district that follows.

These statistics do not even take into account the number of whites in predominantly black precincts who will vote for black candidates. "It seems intuitively likely, for example, that whites who choose to live in

racially integrated neighborhoods are more likely than whites who choose to live in all-white areas to support black candidates . . ." (Maps and Misreadings: The Role of Geographic Compactness in Racial Vote Dilution Litigation, Karlan, 24 Harvard Civil Rights-Civil Liberties Law Review 173, 203 (1989)).

* * * *

¶19) Alternatives proposed by minority groups and by the Republican party drew three additional seats in the Southeast and Southcentral parts of the State. (ACLU page 8)

There is some confusion over the number of alternative districts proposed in the Southeast and Southcentral parts of the State. While both the ACLU and Republicans cite two districts that cover roughly the same areas (Duplin-Sampson-Wayne, Bladen-Pender-Brunswick-Columbus-New Hanover), there is a mention on ACLU page 14 of a district combining black populations in Jones and Onslow with Camp Lejeune, and a mention in the ACLU proposal to create a third district including parts of Jones and Craven counties. The Jones/Onslow/Lejeune district discussed by Mr. Shipman (B) (28-F-3(a), 3/21/91 transcript page 7) is in fact not analogous at all to the House district created in 1982 in Cumberland County, or the new Senate district created in 1991 in that county. In both those cases, the military base is a minority of the population in the district, thus, no reasonable amount of political organizing on the base by disaffected whites could swing the district. Shipman's plan, apparently to put 5,000 off-base predominantly black persons with 50,000 base personnel would not in fact be a black majority district at all. It would take a relatively minor registration effort among military personnel to make this district majority white in voter registration. The

ACLU third Southeast district substantially overlaps District 79 created by the enacted plan, would necessitate eliminating it as a minority district, and would have the effect of putting black incumbent Wainwright in a white district.

The State reads the ACLU comment as actually talking about two additional minority districts in the Southeast, as that is the gist of their remarks on ACLU pages 10-18, and one additional district in the Southcentral area.

* * * *

¶22) Southeast North Carolina . . . the total black population in this nine-county area . . . is enough to constitute a 65% majority in four single member districts, yet not a single majority black district was drawn in this region . . . [I]nstead the State continued . . . submerging and diluting black voting strength . . . As a result of a voting rights suit . . . Duplin County has two majority black county commission districts, as do neighboring Sampson (2/5) and Bladen (1 of 3) counties . . . these black commission districts could easily have been used as the foundation for majority black House Districts. (ACLU page 10-12)

Even though the black population of these 9 counties together is a 65% majority of 4 districts, no one has shown a map that demonstrates the possibility of four districts, because of the geographic dispersion of blacks in that part of the State. With regard to putting together the county commission districts in Bladen, Sampson, and Duplin, there are two problems. Leslie Winner states that ACLU exhibit 10 outlines the wrong district as the black district, D1 is black, not D3, and if their rendition of the Sampson black districts is correct, the county commission districts for the three counties are not contiguous. Leslie Winner tells me she can not [sic] tell from the

exhibit which Duplin district is black, and the combined population (9984 + 9910 + 9925 + 2/5 Duplin) does not add up to enough for a district.

As noted above, the State has used the Jones-Lenoir area to create minority District 79, so it can not [sic] be used to build minority districts in the nine-county area. Additionally, the Jones-Onslow minority district alluded to by Shipman is in the opinion of the State not a minority district because the effect of Camp Lejeune is not as alleged. This is covered in more detail earlier in this memorandum.

¶23) There is strong feeling on the part of black leaders in SE North Carolina that they were left out of the Gingles litigation . . . [in] the 1990 reapportionment they should be included . . . many other black citizens came to the public hearings and made the same request . . . draw some majority black districts in SE North Carolina . . . none of these plans were adopted and instead three majority white districts were created in that area. The assertion that co-chairman Bowen [W] was in contact with the three black commissioners from Bladen County and the two black commissioners from Sampson County, none of which asked him to create a black district in these counties is refuted by the black commissioners themselves . . . all state that Bowen never discussed the matter with them . . . (ACLU page 12-17)

The State knows nothing about an allegation that the Southeast was left out of the Gingles lawsuit. The State did not write the complaint in that lawsuit, since it was the defendant.

After the initial round of hearings at which some members of the black community requested that majority black districts be drawn in the southeast, the staff was instructed to determine if a black district could be drawn in the southeast using whole precincts in accordance with our criteria. Such dis-

trict could not be created. The State heard nothing from black citizens in the Southeast until Wilde's letter of May 22. This was in contrast to the heavy input from minority citizens in the Robeson, Hoke, Scotland area. Staff analyzed the three districts in Wilde's letter, and determined that one overlapped with the Wainwright district that the State was creating (District 79). The State heard very little black support for the other two districts, despite the fact that one of the committee co-chairs is from that area and another committee co-chair is black.

The State does not allege that Bowen talked to the five black commissioners about the subject, but that he was in contact with those commissioners about various matters during the session, and they never urged him to create the minority districts. They knew he was the co-chair of the committee, and if they wanted him to support the ACLU plan purportedly submitted on their behalf, they had every opportunity to tell him that. In contrast the black Democratic party chair in Pender County asked Bowen not to divide that county, and there was sentiment in Bladen and Sampson not to divide the counties. Given a lot of sentiment not to divide, and a little support to divide, a decision was made not to divide them. There was no racially discriminatory intent behind this decision.

The State received no communication from any black person asking it to adopt the Pope Plan, and the Rhyne (W) amendment was not unveiled until presentation on the House floor, and the State received no communications about it either.

¶24) The fact that alternative districts cross county lines or split cities or other geographic units does not relieve the State of its obligation to create additional majority black districts. Further, the State's interest in

drawing districts along precinct lines is minimal. There are a great variety of election — municipal, county, judicial, as well as State legislative and Congressional — many of which split precincts to create election districts. Certainly, this has often been the case in creating racially fair election districts for county commissions and school boards. Indeed, it is rare that everyone in the same precinct would vote for all of the same offices. Under the proposed congressional plan, for example, many voters in the same precincts throughout N.C. will find themselves in different congressional districts . . . Division of precincts is the rule, not the exception. (ACLU page 17-18)

The criteria of not dividing precincts was adopted for several reasons. Political campaigns are the process by which candidates are elected. Political parties and candidate organizations are usually organized at the precinct level. ACLU repeatedly in its comments suggests that racial percentages could be "improved" by going to the block group or bloc level. But the State knows of no political organization or candidate committee organized at the block group or block level.

The State has been shown no evidence that division of precincts is the rule in North Carolina, or that it is rare that all the people in a precinct have the same ballot. In the Congressional plan, a total of 14 election precincts are divided out of about 2500 precincts in the State, and 3 of those precincts had all of their population in one of the districts. The 11 precincts where some population is in one district and the remainder is in another have a total population of 31808 out of a total State population of 6,628,632, or just 0.48% of the State's population.

In contrast, at the Senate redistricting Public hearing in Charlotte on March 16, 1991 (included in the congressional submittal as attachment C-28F-3(c))

two of the leading experts in the election law field, who have actual responsibility for conducting elections spoke. They were Professor Ted Arrington (W) the Republican chair of the Mecklenburg County Board of Elections, and William B.A. Culp (W), who has been the supervisor of elections in Mecklenburg County since 1971, and is a Democrat. Keep in mind that Mecklenburg is the largest county and has the most sophisticated election capability.

Dr. Arrington stated ". . . the technology of redistricting has taken a quantum leap in the decade . . . with the advent of the TIGER files . . . there are going to be a lot of other people giving you suggestions . . . that revolution in technology also brings up another — and I can only describe it as a nightmare . . . and that nightmare is . . . splitting precincts. I realize [if] you [sic] going to have to split counties we have been doing that for decades . . . that's not very harmful . . . if you begin to split precincts, at least in Mecklenburg County, you're going to make it impossible for us to run the election system . . . if you begin to put individual blocks into different districts, we're not going to be able to run the election at least in presidential years . . . if you take a block out of a district and put it in an adjoining district that might be okay, but it's very likely that the House may take their districts and draw between the two, so we can't put that block in either precinct . . . in which case, what are we going to do, take that block and declare it a precinct . . . we beg you, don't divide precincts . . ." (transcript at 5). The State found this testimony significant in developing its nondiscriminatory criteria.

The practical problem involved in dividing precincts is that the board of elections must either divide the precinct along the district line to create two precincts (often impossible in rural areas be-

cause of a lack of polling places), or administer it as a split precinct.

In a split precinct, the district of each voter within that precinct must be identified, and the card marked. All new voters registering thereafter must not only be assigned to the correct precinct, but to the correct district within that precinct. This added layer slows down the voter registration process, burdening registration drives for minority voters. In addition, on election day, there must be for that precinct as many different sets of ballots and machines as there are combinations of districts within that precinct. That will slow down the voting process in these precincts, thus depressing black turnout.

The ACLU sees no problem with the increasing division of precincts. Yet, if a county is divided below the precinct level for Congress, House, Senate, commissioner, school board, and superior court judge, there exists the mathematical possibility that a precinct could require 64 different combinations of ballots and machines. While this is an unlikely event, it is certainly a valid non discriminatory reason to want to avoid splitting precincts.

The State's interest in dividing precincts is not minimal at all. It is of crucial importance to administering the election. To the extent that divided precincts tend to occur most often in areas with heavy black population, it will complicate the voter registration and election process in these precincts, reducing minority turnout.

Further, the citation to Jeffers v. Clinton on page 17 of the ACLU comment is not on point. The ACLU cites that case for the conclusion that "... the fact that alternative districts cross county lines or split cities or other geographic units does not relieve the state of its obligation to create additional majority

black districts." In fact, what the district court said was: "The one person one vote rule inevitably requires that county lines and natural barriers be crossed in some instances, and that cities and other political or geographical units be split in others." (*Jeffers v. Clinton*, 730 F.Supp. 196, 207 (E.D. Ark 1989), aff'd mem. 112 L.Ed. 2d 656 (1991), emphasis added.)

Furthermore, a criteria of not dividing precincts helps to satisfy the Gingles compactness requirement. As enunciated in Dillard v. Baldwin County Board of Education, 686 F.Supp. 1459, 1466 (M.D. Ala. 1988), the district is not compact if its members and representatives could not easily tell who actually lived within the district. To the extent that whole precincts are used, residents of the district and persons elected to represent the district are more likely to know who actually lives in the district. To the extent that the ACLU insists that percentages be increased by dividing precincts, candidates and voters are less likely to know who is in the district, and the district is less likely to have effective representation.

¶24A) Southcentral North Carolina . . . the only new majority minority districts created in Southcentral North Carolina under the State's plan are Districts 85 and 87 . . . alternative plans presented by the ACLU/NAACP/SRC and by Rep. Pope created a third majority/minority district in the area. The ACLU/NAACP/SCR plan (drawn on the State's computer) combined parts of Union, Anson, Montgomery, Richmond, Scotland and Hoke Counties to create a 53.38% Black district . . . Rep. Pope presented a similar district with a 51.6% BVAP. The second objection, that the Voting age population was too low to give black voters a realistic opportunity to control the outcome of the elec-

tion, ignores the fact that both ACLU/NAACP/SRC and Pope had limited computer time. (ACLU page 18)

Neither the ACLU/NAACP/SRC nor Pope presented any evidence to satisfy any of the prongs of the Gingles case that would lead to the conclusion that the Voting Rights Act requires a majority-minority district in this area of the State. This reply has already demonstrated that the ACLU/NAACP/SRC did not have their computer time limited, but merely stopped participating in the process. The claim that Pope had limited computer time is disingenuous, he in fact had lengthy access to the computer system, and the ACLU even claims in its comment that the Republican incumbents were "... the only people with extended access to the computers." (ACLU page 5)

The ACLU purports to get three minority districts out of the area by proposing that Robeson County be a two-member majority/minority district, and then using black and Indian population in Hoke and Scotland as part of another district. Another problem with their plan is that they assume cohesiveness between Blacks and Indians in their two member district, a fact that is conclusively refuted by the public meeting testimony of the two groups with regard to their competing demands for House districts, the Indian groups wanting to retain a multi-member district and the blacks wanting single-member districts in Hoke/Robeson/Scotland. Further, election statistics submitted with the congressional plan show lack of cohesion between black and Indian voting groups. Based on a legislative determination that the three member district needed to be broken down to allow an Indian and black district, the ACLU plan is inconsistent with the legislative plan.

The ACLU/NAACP/SRC southcentral district, which appears in Exhibit 12 of the ACLU comment is so

uncompact and convoluted that there is no sense of community, its members and its representatives could not conveniently stay in touch with each other, and its members and representatives could not easily tell who actually lived within the district. It stitches together dozens of disconnected black concentrations. According to the handwritten note on the Exhibit, it is built at the block group level, no information is attached as to electability of black candidates within the district, what communities it consists of, what political organizations exist within it, or any other information necessary to evaluate the district. The Pope district proposed for this area and shown as Exhibit 27R-4 in the submission is similarly uncompact, and no evidence was presented as to the electability of black candidates in that district.

I again reiterate that there is no evidence that in either the ACLU or Pope plan that minorities could elect a representative of their choice in the south-central area, nor are any other prongs of the Gingles case met. Further, there is only comment of one person at one public hearing, who focused mainly on county commission districts, concerning a minority district in this area.

¶25) Central North Region . . . no majority black districts were drawn by the State in Northern N.C. West of Granville County . . . Rep. Pope proposed an additional majority black district in the North Central portion of the State, encompassing parts of Alamance, Caswell, Granville, Orange, Person, and Rockingham Counties (District 25)[.] The district is 61.24% BVAP. No serious consideration was given to this district by the State . . . the State adds the charge that it is "extremely sprawling, uncompact and irregular" . . . As *Jeffers v. Clinton* makes clear, that alternative plans split . . . geographic units does not relieve the state of its obligation to create

majority black districts. The question is whether the alternative districts are "materially stranger in shape than at least some of the districts contained in the present apportionment plan. If they are not, they cannot be rejected on this ground. Here, several of the districts adopted by the state are equally "strange", so the State's argument is not only made of whole cloth, but fails the legal test as well. The lack of black support for the actual plan is likely the result of the exclusion of the black community from any meaningful ability to participate in the reapportionment process after the close of the hearings . . . as demonstrated by the petitions of members of the black community in Alamance County . . . black citizens, now that they have been appraised of the possible district, wish it to be drawn. (ACLU page 19-20)

The ACLU misrepresents the facts and the law here. Gingles requires that a district be geographically compact in order to satisfy one of the prongs of the initial test. As best enunciated by the district court in Dillard v. Baldwin County Board of Education, 686 F. Supp. 1459, 1466, (M.D.Ala 1988). "A district would not be sufficiently compact if it was so spread out that there was no sense of community, that is if its members and its representatives could not effectively and efficiently stay in touch with each other, or if it was so convoluted there was no sense of community, that is, if its members and its representatives could not easily tell who actually lived within the district."

The computer description of the contents of District 25 in Pope's plan (Exhibit 8) takes up 92 pages, in comparison, the computer description of all 95 districts of the State enacted plan takes up 191 pages. District 25 as noted by ACLU consists of parts of six counties. But it consists of 7 whole precincts and parts of 47 other precincts, as follows:

| COUNTY | PARTIAL PRECINCT | WHOLE PRECINCTS |
|------------|---------------------|--------------------|
| ALAMANCE | 8 | 1 |
| CASWELL | 7 | 4 |
| GRANVILLE | 4 | 0 |
| ORANGE | 9 | 0 |
| PERSON | 11 | 1 |
| ROCKINGHAM | 8 | 1 |

As seen by the map of District 25 attached as Exhibit 9, the district is in fact so spread out that there is no sense of community, that is its members and its representatives could not effectively and efficiently stay in touch with each other, if it was so convoluted there was no sense of community, that is, its members and its representatives could not easily tell who actually lived within the district. The State has not divided any black community in creating its districting plan in the north central part of the State, it has merely failed to combine together a hodgepodge of little pockets of black population to create an ungainly allegation of a district.

District 25 includes a 2 mile stretch of the Haw River, as an example, to connect two parts of the district, (Exhibit 10), and contains dozens of tentacles. If the language in Gingles means anything, this black population is not "sufficiently geographically compact", and this area of the State has no "clear" violation of Section 2.

The ACLU has failed in its plan to show proof of satisfaction of any of the prongs of the Gingles test in this district. Ludicrously, the district even contains parts of nine precincts from Orange County, a county that is the core of a predominantly white district that currently has elected a black Senator, and has the lowest incidence of racial block voting of any county in the State. In the Gantt-Helms race,

using the same methodology in paragraph 17 of this reply, page __, 66.58% of the white voters in Orange County voted for Gantt.

Although the ACLU states that its Exhibit 15 in its comments contains signatures from residents of Alamance County asking for this district, there are no such signatures contained in its Exhibit 15. No such petition was given to the General Assembly.

The ACLU has shown no violation of Section 5 or Section 2, no support for the district, and it is totally uncompact. This District fails the compactness tests of Gingles and Dillard, and creation of this district is not required. As to the Jeffers test, the district in fact is materially stranger in shape than some of the districts contained in the enacted plan. Pope's district 25 has been attached as Exhibits 9 and 10, attached as Exhibits 11 and 12 are maps of the State's districts 6 and 16 (attacked by the ACLU as being as strange as Pope's district 25, ACLU page 19) District 6 in the State's plan is composed of whole precincts and is quite compact, District 16 is the predominantly white area that wraps around the predominantly black/Indian districts of Hoke, Robeson, Scotland, and Cumberland. It was designed to consist of the remainder of Hoke, Scotland, and Robeson Counties, which had been the three member district, plus added population as required by one person one vote. In fact, the part of Moore County in the district was part of Hoke County until 1951. Acquisition by the military of land in Hoke County for Ft. Bragg had cut off that township from the remainder of Hoke County, and it was moved to Moore County to allow access to services. District 6 is entirely 22 whole precincts, District 16 has 24 whole precincts and one divided precinct.

* * * *

¶32) As evidenced by the plans submitted to the Senate reapportionment committee on May 14, 1991, two majority black districts can be drawn in the area stretching from Anson County to Pender County . . . the first proposed district starts in Anson County, and includes portions of Richmond, Scotland (all), Hoke, and Robeson Counties . . . the district is 30.7% Black, and 27.97% Native American . . . the second district could have been drawn preserving the Fayetteville District . . . Attached is an alternative configuration [which] has a black population of 52.04%, and a native american population of 5.82%, for a combined majority/minority district of 57.86% . . . this district is drawn at the township, VTD, and tract level . . . so the racial composition could be dramatically improved using a computer. Such a district was proposed by Senator Daughtry. Under his plan, another majority black district is drawn east of the State's District 30, consisting of parts of Bladen, Brunswick, Columbus, Duplin, New Hanover, and Onslow Counties, at 52.26% black, using whole precincts. The state gave two reasons for rejecting this district: the racial composition (too low), and its shape (uncompact). Neither of these reasons is valid. The black population could easily be increased by going to the block level, thereby creating an effective black voting majority . . . as to the charge that it "sprawls all over southeast N.C. . . . several of the districts drawn by the legislature in Northwestern N.C. sprawl as well, for example District 27. (ACLU page 28-30)

As to the Anson, Richmond, Scotland, Hoke, Robeson District, which ACLU cites with a minority population of 30.7% black and 27.97% Native American, staff analyzed that plan, and found that the actual percentages were 30.54% black and 28.57% Native American, for a total of 59.11%. In the enacted plan, District 30 is 27.87% black, and 33.07% Native American, for a total of 60.95%. This reply has previously noted there has been no conclusive

evidence of voting cohesion between the blacks and Native Americans, but even if there was such evidence, the State's enacted plan has a higher combined black/Native American population in the southcentral district than does ACLU. Presumably, this district is only proposed if the southeast "minority" district, which would include parts of Robeson County, was created.

As to the Daughtry districts in the Southeast, Daughtry proposed two different versions of the district in DAUGHTRY SENATE PLAN 6/17/91 and DAUGHTRY SENATE PLAN 7/1/91. In those two plans, the black populations were 52.26% and 52.65% respectively, and the black voting age populations were 48.71% and 40.53% respectively (the second plan includes military populations in the "minority" district). Both plans do go below the precinct level in Sampson County. Neither Daughtry plan included any evidence that a minority candidate could be successful in this district, nor that there was enough compactness to meet the Dillard test. No evidence has been shown beyond conjecture about further going below the precinct level. In addition, as pointed out above, the more a district goes to the block level, the harder it will be for a rural black area to organize a campaign. This is clearly one of the reasons for the compactness requirement enunciated in Gingles and Dillard.

Attached as Exhibits 14, 15, and 16 to this reply are District 27 in the enacted plan, and the southeast minority districts in DAUGHTRY SENATE PLAN 6/17/91 and DAUGHTRY SENATE PLAN 7/1/91, to show the compactness. The Daughtry Senate districts are "materially stranger in shape than at least some of the districts contained in the present apportionment plan," and this fails the Dillard test. In addition, if, as ACLU suggests, these districts can

have their minority percentage "improved" by going to the block level, they will quickly become even more materially stranger in shape.

As to the plan shown in Exhibit 18 to the ACLU comments, the district shown on the map is not the actual shape of the district, note the first page of the exhibit. "the map shows the district minus the Robeson County component." I was unable to recreate the entire district to show you a map of its shape, because some of the census terminology in Sherman's report was unintelligible to us, such as DUPLIN COUNTY TR 3706191060/99999999 2 population 1817. I could find no tract or block group with such a population. I have mapped the Robeson County portion of the Sherman district, and put it together with the map ACLU attached to be Exhibit 17 in this reply. Note comparing just the Columbus and Bladen parts of Sherman's district, which I was able to build, with Sherman's sketch in ACLU exhibit 18 that the ACLU had significantly "smoothed out" the shape of their map from its actual shape in trying to prove it did not "sprawl all over". It is materially stranger than District 27 which the ACLU cites in its report.

In fact, none of the discussion by the ACLU about any of the southeast Senate districts touches on many of the legal issues required. There is no discussion of minority electability, no discussion of cohesiveness of the district. The district fails the Dillard test that "A district would not be sufficiently compact if it was so spread out that there was no sense of community, that is if its members and its representatives could not effectively and efficiently stay in touch with each other, or if it was so convoluted there was no sense of community, that is, if its members and its representatives could not easily tell who actually lived within the district."

¶33) Northeastern North Carolina . . . again, the configuration chosen by the Legislature precluded the creation of another majority black district in North Carolina . . . three majority black districts can be drawn where the North Carolina legislature drew only two, see Daughtry Senate plan, Districts 1 (56.7% Black), 2 (55.62% black), and 3 (58.24% black), compare with Senate Districts 2 (59.39% black) and 6 (59.23% black) . . . the only justification given by the State for not adopting three black districts was that the voter registration numbers were too low to give black voters a reasonable assurance of electing representatives of their choice . . . However, as noted above, these districts were drawn at the precinct level, and could therefore have been made into electable districts by going to the block level. More fundamentally, when the racial compositions of Daughtry's three districts are compared with the two districts adopted under the Senate plan, the differences are minimal. (ACLU page 30-31)

In the enacted plan, black voter registration is 54.95% in District 2, and 53.31% in District 6. In Daughtry's Plan, the percentages for Districts 1, 2, and 3 are 52.33%, 50.88%, and 52.61%. The differences between these percentages, which are so close to 50%, are not minimal. Senator Ballance expressed his concern with the low percentage of black registered voters in his district (S-28F-3, transcript pages 38-40) stating "Senator Daughtry I'm . . . here . . . to point out what I think are some problems with it, even though you have the first six districts, I believe, majority populations would be Black . . . When you turn over to the next page and look at the Senators in those districts is where I have a problem . . . in District 1, the registered black voters would be 52 percent . . . And then you go to District 2 where I believe would cover my current county — and I am not here to protect myself — but that percentage drops down to 50 percent, 50.8. District 3 is

52.6 . . . we do have to pay a lot of attention to the numbers, and that is the registered voters that we have in the district as we draw these districts . . . I think its important as to whether or not we're going to latch onto this plan, simply because it draws six districts which would be majority black districts . . . I don't think that's the test. I think the test is whether or not, No. 1, whether they can be elected in that district . . ."

Ballance, who was elected in a district created as a result of the Gingles case, clearly felt black candidates would have difficulty winning in the three "minority" districts proposed by Daughtry. Ballance voted against Daughtry's plan, and for the enacted plan. As an expert on voting patterns in the Northeast, he is a much better judge of electability of blacks than simply using Senator Daughtry's assertions that the three districts are "minority districts" as proof.

Daughtry has shown no evidence, in fact, that any of his three Northeast districts are likely to elect a black Senator. Numbers that would be sufficient in urban areas are not sufficient in rural areas.

¶34) Senator Daughtry responds . . . Senator Winner says that my plan has either too many blacks in the plan or not enough blacks in the plan . . . All I can tell you is that each of the nine districts has the criteria of over 50% registration, voting age and population." (ACLU page 31, fn 24)

In fact, district 6 (southeast) in Daughtry's Senate plan does not have 50% black voting age population, and district 7 (south central) does not have 50% black census, VAP, or voter registration. Daughtry's answer seems to indicate a misunderstanding of Winner's position that different percentages are

needed in urban versus rural areas to be an electable district, thus the same percentage could be packing in an urban district, and insufficient in a rural district. Daughtry's plan and the testimony on it before the committee seems to give no indication that the question of minority electability was considered. Rote repetition of statistics proves nothing.

There is no evidence in the record of any support by black persons of Daughtry's plan in the Northeast.

* * * *

¶36) Low racial compositions . . . five of the six majority black Senate districts drawn by the legislature were drawn at percentages lower than reasonable alternatives proposed by minority groups and/or Republican members of the legislature . . . (ACLU page 32)

The fact that other plans had a higher percentage racial composition than that of the plan enacted by the General Assembly proves nothing. The question is whether the plans enacted by the General Assembly allow blacks to elect a representative of their choice in the district. Percentages higher than that, while they may be legally permissible unless they amount to packing, nevertheless reduce minority influence in other districts. A legislative goal to maximize minority influence in other districts after ensuring black election in the minority districts surely is not an impermissible goal. Each specific district will be discussed in the following paragraphs.

* * * *

¶40) District 41, Fayetteville, newly created at 43.31% black (55.4% black registered voters) was drawn under the Daughtry plan to include minority black sections of Harnett and Wake Counties, for a total black population of 56.08% (ACLU page 33)

District 41 was drawn by the Senate Committee to mirror House District 17 in the plan enacted in 1982. As the Justice Department suggested in its 1982 objection, the military base with its small number of registered voters could be coupled with the heavy black concentration of voters in Cumberland County to create a compact, cohesive majority/minority district. A similar House district has over the last 10 years consistently elected black candidates.

The committee saw no need to stretch a district from Fayetteville through Raleigh. It chose instead to create the District in Cumberland County, and moved Raleigh's black community from a three member district 14 to a two member district 14, thus increasing black political influence. In Wake County as a whole, black candidates have had little trouble winning countywide elections. District 14 is 27.25% black population, and 33% of the registered Democrats are black. Gantt received 57.77% of the vote for the U.S. Senate in enacted District 14. Currently, of the 11 countywide elective non-judicial offices elected on an at-large basis in Wake County, two of the seven members of the Board of Commissioners are Black, the Sheriff is Black, and the Register of Deeds is Black. To amplify the black electoral impact beyond that of the countywide information from the preceding sentence, District 14 excludes 31 predominantly white precincts from Wake County, and includes two predominantly white precincts in Johnston County.

In the 1988 General Election, candidate for Wake County Commissioner Vernon Malone (D/b) received

57.34% of the vote in the area to become Senate District 14 against a white Republican. (since there were no black candidates in the two Johnston County precincts, Gantt/Helms totals from 1990 were used in those two precincts) see Attachments S-28D-1 and S-28D-2(a), and Attachment S-28D-3(a) for voter registration totals.

In the 1990 Democratic Primary Election, candidate for County Commissioner Abe Jones (D/b) received 52.16% of the vote in the area to become Senate District 14 against two white candidates (since there were no black candidates in the two Johnston County precincts, Gantt(b)/Easley(w) totals from the 1990 Democratic primary were used in those two precincts) see Attachments S-28D-1 and S-28D-2(b), and Attachment S-28D-3(b) for voter registration totals.

In the 1990 General Election, candidate for County Commissioner Abe Jones(D/b) received 59.38% of the vote in the area to become Senate District 14 against a white candidate (since there were no black candidates in the two Johnston County precincts, Gantt/Helms totals from 1990 were used in those two precincts) see Attachments S-28D-1 and S-28D-2(c), and Attachment S-28D-3(c) for voter registration totals.

In the 1990 General Election, candidate for Sheriff John Baker(D/b) received 68.47% of the vote in the area to become Senate District 14 against a white candidate (since there were no black candidates in the two Johnston County precincts, Gantt/Helms totals from 1990 were used in those two precincts) see Attachments S-28D-1 and S-28D-2(c), and Attachment S-28D-3(c) for voter registration totals.

In the 1990 General Election, candidate for United States Senator Harvey Gantt(D/b) received 57.77% of

the vote in the area to become Senate District 14 against Jesse Helms(R/w), see Attachments S-28D-1 and Attachment 28D-1 in the House submission, and Attachment S-28D-3(c) for voter registration totals. As noted in the summary for Section S-28D in the Senate submittal. Thus, the plan chosen by the legislature creates a district in Cumberland County where a black will be elected, and creates District 14 as part of Wake County where minorities will have an equal opportunity to elect candidates of their choice.

There is no legal requirement to create a Cumberland/Harnett/Wake district in place of the Cumberland district enacted by the General Assembly.

¶41) The alternatives proposed for each of these five districts not only increase the black percentages in each of the districts — but also increase the number of counties in which the black community will be included in a majority black district. The black populations in each of the following counties could have been, but were not, included in fairly drawn majority/minority districts [list of 20 counties] (ACLU page 33)

There is no legal requirement to maximize the number of counties where black communities are in black districts. There is no positive correlation between the number of counties in a district and the amount of compliance with Sections 2 and 5. Indeed, the greater number of counties in a district, the less likely there is to be any community of interest, and the more likely a district is to be uncompact and unrepresentable, failing the Dillard test.

¶42) Under the reapportionment plan drawn by the legislature, there is only one majority black (55.69% black) Congressional district, despite the fact that blacks constitute 22% of the state's population. Further, the substantial black and Native American populations in the

Southeast were fragmented among three different congressional districts: Districts 3, 7, and 8 . . . many of black citizens who appeared at hearings throughout the state requested that a 2nd black congressional district be drawn . . . at least three alternative plans were proposed, each of which drew *two* majority black districts . . . Under Balmer 6.2, the second district (South-central is 48% black/8.3% Indian. Under Balmer 7.8, the North/Central district is 55.4% and the Northeast to NorthCentral district is 53.3% black . . and under Balmer version 8.1, District 2 (northeast to northcentral is 58.5% black, while the second district 12 (notrthcentral [sic] to Charlotte) is 56.8% black . . . None of the alternative plans were, however, circulated for public comment. There was also extensive criticism of the public access procedures for computer time . . . the primary reason given by the State for not adopting any of the alternative, 2 minority Congressional plans was that it dramatically decreased black influence in Districts 4, 7, 8, and 9 . . . protection of white Democratic incumbents is not a valid reason for refusal to create a majority minority district . . . A second reason is that the district is "too sprawling and uncompact" to allow for effective campaigning or representation . . . However, compactness was not among the criteria adopted by the Congressional Redistricting Committees . . . nor can the term compact be used to describe the final plan adopted by the legislature . . . a third reason is equally pretextual . . . there is no real community of interest among black citizens of the district . . . finally, the single majority black district adopted by the legislature has a racial composition of only 55.7% black (51.34% B Reg. given voter registration and turnout histories in North Eastern, N.C., a 55.7% black district may not be an electable one. Carolyn Coleman offered an alternative plan . . similar plans were proposed by the N.C. Black leadership Caucus . . . (ACLU page 34-37) The boundary lines of the congressional districts . . . divide black population concentra-

tions in a manner that neutralizes black voting potential in the State (Balmer page 1)

There was no expressed black support for BALMER 6.2. BALMER 7.8 was not even introduced until the day the second House adopted the conference report on the enacted plan. BALMER 8.1 was not created until after the enactment of the Congressional redistricting plan, was not even noticed formally by the State until it was seen in the process of reviewing the Justice Department comment file on this submission, and referenced in the ACLU comment page 35, although Representative Balmer may have placed a copy of the plan in the legislative library in August. The ACLU is incorrect if it states that the General Assembly received three plans from Representative Balmer as part of its consideration of the plan.

The State did not divide black population concentrations in enacting the plans. It at most failed to put together dispersed black population centers. No black community was divided, the plan took pains to avoid that result.

The ACLU states that limited computer time prevented alternative plans from being created, yet it presents three different alternate plans. The entire legislative process resulted in only six different plans being presented by the legislative leadership.

No expert evidence was shown in any of the Balmer plans, nor in any of the alternates, of the electability of black congressional candidates in the alternative districts. For the question of electability in the First Congressional District in the enacted plan, the State had the collective knowledge of black legislators from the Northeast, all of whom were familiar with the area, including Representative Toby Fitch, co-chair of the committee, who had worked in the 1972 Second Congressional District

campaign of now Senator Howard Lee (B), and Representative Mickey Michaux, who had been an unsuccessful candidate in that district in 1982. Representative Fitch was responsible for the initial decision on the conceptual design of the plan going into Jones and Craven counties, as the Second Congressional district had done in the post-Civil war area. Statistics available to the committee showed that Democrat Harvey Gantt received 62.2% of the vote in the enacted district. The different variations of the First Congressional District that appeared in PLANS #1 through #6 were all examined by black legislators, and not one negative comment was received about any problem of electability of black candidates under the plan.

The State also had the historical advantage of knowing the configuration of the Second Congressional District after the Civil War, when black candidates were elected to serve the second district. Attached as an example is Exhibit 18, a map of the Second Congressional District from 1883-1891. Congressional Districts were redrawn in 1901, allegedly to eliminate the opportunity for minorities to serve in Congress. Note that the district is similar to the First Congressional District in the enacted plan. Every county in the Second Congressional District in the 1883 plan, which stretched from Vance County down into Jones and Craven Counties, appears in whole or in part in the 1991 plan. The area of the enacted First Congressional District and the pre-grandfather clause Second District share historical political connections.

Additionally, substantial and compelling evidence shows that minority voters have an equal opportunity to elect candidates of their choice in the Fourth Congressional District in the enacted plan. Some evidence also shows that minority voters have an

equal opportunity to elect candidates of their choice in the Ninth Congressional District in the enacted plan, but it is not nearly as conclusive and is not recited here.

In the Fourth Congressional District, Gantt received 58.16% of the vote, with a black voter registration of just 16.41%, compared with the 62.2% in District 1 which has a 51.34% black voter registration. Wake County, which has four black constitutional officers elected countywide at-large (sheriff, register of deeds, two county commissioners), has had a State Senator elected at-large, and the Speaker of the House is a resident of Wake County. (see further discussion in paragraph 40 of this reply)

Wake County has 76.5% of the population of the district and 75.75% of the registered voters. The plan includes all of Wake County except one precinct where Gantt received just 18.68% of the vote, his worst showing in the county. Gantt received a majority of the white vote in 38 predominantly white precincts in Wake County. In fact, Gantt received a higher percentage of votes from white voters in Wake County than he did in his home county of Mecklenburg. In Wake County, Sheriff John Baker (D) is currently in his fourth term, and the progression of election returns seen in the newspaper article from the News & Observer of October 13, 1991 (Exhibit 19) show the lack of racial block voting in Wake County, and the dramatic change since the Gingles findings. In the 1978 election, contemporaneous with the Gingles findings, there was racial block voting. But by 1990, Baker was carrying 99 of the 100 precincts, carrying rural precincts by a 2-1 margin that Gantt lost the same day. This reinforces not only the thesis of equal minority opportunity in the Fourth District, but also buttresses the rebuttal to the ACLU claim that the Gantt vote was not only

unusual but also overstated. The Gantt vote in fact is quite representative, if not an understatement of the electability of local black candidates in the areas that this reply and the submittals use the Gantt statistics as evidence of equal opportunity.

Orange County, which has had a black elected county commissioner at-large continuously since 1972, elected a black mayor in predominantly white Chapel Hill in 1969, 1971, and 1973, and has elected a State Senator from a predominantly white district, makes up 15.22% of the population and 16.64% of the population. The plan excludes in Orange County from the Fourth Congressional District five precincts in which Gantt received a smaller percentage than the county average. Chatham County, which has had a black county commissioner elected countywide for the last three terms and is located in a predominantly white Senate district which is represented by a black Senator makes up 3.1% of the population of the district and 3.5% of the registered voters, and of the 10 precincts from Chatham County in District 4, seven had more than the countywide average percentage of votes for Gantt. Additionally, Gantt's opponent, Jesse Helms, is a resident of Wake County, which might have given Helms and [sic] advantage in Wake County.

All this evidence indicates that blacks have an equal opportunity to elect candidates of their choice in the Fourth Congressional District, thus showing at least two such districts in the enacted plan (1 and 4)[.] The alternative plans have at best two such districts. Even assuming that two minority districts are required, and assuming that the alternative plans show two minority congressional districts that meet those requirements, then both they and the enacted plan are in compliance with the Voting Rights Act.

The ACLU alleges that compactness should not be considered because it was not an adopted criteria, and because the term compact "cannot be used to describe the final plan adopted by the legislature." This begs the question. If a district must be compact in order to meet the compactness tests discussed in Dillard and Jeffers in order for it to be required under the Voting Rights Act, it does not matter if compactness was not a criteria adopted by the committee. In addition, it is clear that the alternative districts proposed in the three Balmer Plans are all materially stranger than those adopted by the legislature. See Exhibit 20 for the three maps. In Balmer 7.4, the eastern "minority" district is clearly stranger than anything in the enacted plan. It is not sufficiently compact as it is so spread out that there was no sense of community, its members and its representatives could not effectively and efficiently stay in touch with each other, and it is so convoluted there was no sense of community, that is, if its members and its representatives could not easily tell who actually lived within the district. (Dillard) The same can be said about the southern "minority" district in Balmer 6.2, which as previously noted here and in the submittal, is not a minority district as no evidence has been submitted about the cohesiveness of voting between black and Indian voters. Both minority districts in Balmer 8.1 fail the compactness tests. The western "minority" district (12) defies imagination, stretching for 125 miles from Charlotte to Caswell County, never being more than five miles wide, and for considerable stretches appearing from the map with Balmer's August 5, 1991 submittal to be a mile wide or less. It then arcs in a curve another 50 miles into Durham. Along the way, it has tendrils into Winston-Salem, Reidsville, and Burlington. It would be preposterous to say that this district is compact.

The ACLU insists that the reason for rejection of the alternative plans by the legislature was that they would decrease black influence. While this was certainly a factor, some other reasons were the sprawling uncompactness, and the sense that they [did not] show[] minority electability.

Taking all this evidence as a whole, there is no discriminatory purpose in the enacted Congressional plan. There is no retrogression from the existing plan, indeed, the ability of minorities to elect candidates of their choice caused by the reconfiguration of the First and Fourth Congressional Districts has improved this ability. Also, the evidence shows there has been no discriminatory effect in the plan.

¶43) each of the plans was intended to dilute minority strength . . . reapportionment plans are also objectionable under Section 5 where there is evidence that the legislature intentionally discriminated against its minority voters in drawing new districts. In North Carolina, all three of the plans are infected with such a racially discriminatory purpose . . . the purpose behind each of the plans was the protection of the Democratic majority in North Carolina . . . districts that admittedly could have been drawn were not, and racial majorities in existing districts were reduced . . . so that black voters could be used to protect Democratic incumbents . . . the justification for both actions . . . is that the legislature felt that black voters had more influence overall with fewer black districts (ACLU page 38)

The ACLU has failed to show any proof of any racially discriminatory purpose. Perhaps the best synopsis of the non-racially motivated reasons for adoption of the plans was stated by Senator Ballance in the Senate Public hearing, S-28F-3, transcript pages 37-40, when he stated:

"I believe that the goal of these districts is not only to have black representation, but to have effective representation in the Senate and the House, in the Senate in this case. I say that, because I don't subscribe to a separate party. And if we are to -- to have blacks in the Senate-- we now have five, I think -- I think they are effective. If we are to draw districts as are put in Senator Daughtry's plan, I'm not sure how effective they may be. One of the things that we know is that in the Senate, you have to have at least 26 votes, if everybody is home, in order to pass a bill. And six Senators can't pass a bill . . . the other thing I would say is this . . . If I'm going to accept, per se, a plan drawn by the [X]epublican party, I'd like to have some indication that the -- that the people who present this plan are prepared to support me on some of my bills. And I use me as an example to talk about other bills that may be out forward by Blacks. And I right now don't see a history of that occurring in the Senate and maybe in the House, too . . ."

The General Assembly in enacting the plan looked carefully at what percentages of votes were necessary to elect minority candidates in various districts. In a policy choice to maximize minority influence, as noted by Senator Ballance, the General Assembly did not pack districts. It instead attempted to maximize minority voting strength after creating the majority/minority districts it felt were required by the Voting Rights Act. As you will see from this reply, such history of election results of black candidates was available to the General Assembly. The clock did not stop with the Gladson case, progress in black voter registration and increased likelihood of white voters supporting black candidates led the General Assembly to a reasoned, case by case analysis of each district.

Even if it turns out that the General Assembly did not correctly apply Section 5 and Section 2 in every case, it cannot be said that there was any discriminatory purpose involved in the legislative action. Legislators, with similar perspectives as those enunciated by Senator Ballance, looked at examples such as the "minority district" plans put forth in the H119(V2) and DAUGHTRY plans, and alternative Congressional plans, and saw, as outlined in paragraph 15 of this reply, the same coalition that supported H199(V2) as an amendment on the House floor, oppose HB776 on the House floor, a bill to set up single-member school board districts in Forsyth County. HB776 was supported heavily at a public hearing by speakers from the black community, with information provided about the electability of minority candidates in those districts, and the lack of success of minority candidates under the existing school district plan.

No testimony was provided about the electability of minorities under the H119(V2) or DAUGHTRY SENATE PLANS, or any of the alternate Congressional plans.

If there are allegations of partisan gerrymandering in this part of the ACLU comment, these are not considerations under Sections 2 or 5.

. . . .

(46) The congressional plan . . . the protection of incumbents, particularly white democrats, was the goal of reapportionment . . . Senator Winner expressly stated that the primary goal of the Congressional plan was to keep each of the incumbents in his own district, C-28F-6(m) subcommittee meeting of May 29, 1991, page 4 . . . creating a second black district would have harmed the Democratic incumbents . . . Willy Lovett said . . . when people . . . get elected, we don't seem to get the representation . . . By drawing only one majority black dis-

trict, the plan protected the Democratic incumbents in the 7th and 8th districts . . . Instead, the legislature drew only one majority black district, thereby intentionally diluting black voting strength . . . (ACLU page 41-42.)

Winner did not "expressly say that the primary goal of the Congressional plan was to keep each of the incumbents in his own district" as alleged by the ACLU. He merely stated "we tried to keep all the incumbents, Democrats and Republicans, from ending up in the same districts." Nowhere was it stated that this was the primary goal.

ACLU presents no evidence that any of the alternative plans would actually elect a minority candidate to the "second minority" congressional district. As discussed previously, the alternative proposals do not meet the Dillard test of compactness. In fact, there is really no conclusive evidence that the Voting Rights Act required any predominantly black congressional district to be drawn, but legislative leadership decided early on that there would be a Congressional district in which minorities would be able to be elected. Note in paragraph 42 of this reply substantial and compelling evidence that in the Fourth Congressional District, minorities have an equal opportunity to elect candidates of their choice.

In fact, as to minorities being able to elect candidates of their choice, once a minority congressional district had been created, it could indeed be a valid non discriminatory policy purpose to create as many districts as possible in which minorities can elect a candidate of their choice. An analysis of congressional voting records bears this out. The Leadership Conference on Civil Rights rated the 100th Congress (1978-88) on Civil Rights Voting Record (Exhibit 21)[.] The ratings of the Democratic and Republican Members of Congress are listed below:

Democrats

| | |
|-----------|-----|
| Jones | 87 |
| Valentine | 100 |
| Lancaster | 87 |
| Price | 93 |
| Neal | 80 |
| Rose | 87 |
| Hefner | 87 |
| Clarke | 80 |

Republicans

| | |
|-----------|----|
| Coble | 20 |
| McMillan | 27 |
| Ballenger | 20 |

Examining similar votes (Exhibit 21) for the 101st and 102nd Congress (1989-91) on issues relating to the Civil Rights Restoration Act, Fair Housing Amendments, King Holiday Commission, Hate Crimes Statistics, Civil Rights Act of 1990, and Civil Rights Act of 1991, a comparable rating would be:

Democrats

| | |
|-----------|-----|
| Jones | 100 |
| Valentine | 100 |
| Lancaster | 100 |
| Price | 100 |
| Neal | 100 |
| Rose | 92 |
| Hefner | 100 |

Republicans

| | |
|-----------|---|
| McMillan | 7 |
| Ballenger | 0 |
| Taylor | 0 |
| Coble | 0 |

One could indeed argue that in the absence of the ability to create a second "minority" congressional district, the incumbent Democrats in fact were the candidates of choice of black voters.

The General Assembly did not intentionally dilute minority voting strength.

¶47) The role of black incumbents . . . with a few exceptions . . . most notable Rep. Herman Gist, the black incumbents in both the House and Senate supported and enabled the intentional discrimination contained in the three plans, in the name of protecting the Democratic party. Under such circumstances, the absence of opposition by incumbent black legislators to the pending plans cannot be taken as an indication of the plans' compliance with the Voting Rights Act. Rep Fitch . . . knew that additional black districts could be drawn, and deliberately chose not to draw them . . . Similarly, Rep. Green voted against alternative plans because he viewed them as helping the Republican Party . . . Senator Ballance explained his support . . . historically, the black Senators had always to rely on the Democrats to vote with them in order to get legislation passed . . . perhaps the most outrageous statement of all came from Rep. Micky [sp] Michaux (B) of Durham . . . under the Balmer plan . . . what you are actually doing is taking all the minorities and putting them in two districts and saying that you all have got what you want . . . now go about your business and leave us alone. (ACLU page 42-43)

'There was no intentional discrimination in any of the three plans. It is relevant to take into consideration the support for the plans by black legislators in determining whether there was intentional discrimination.

ACLU has misread the Fitch-Rhyne colloquy. Rhyne asked Fitch if it was possible to draw a minority district in several areas in question. (28F-6(k), transcript pp 5-7) Rhyne had not presented any evidence about compactness, cohesiveness, or the ability of minorities to elect candidates of their choice in additional "minority" district[s] proposed by himself

or Representative Pope. The position apparently was based purely on the percentages involved anything over 50% was a "minority district". It is important to read Fitch's answer on page 5 "Well, neither the Voting Rights Act or the legislative history as we understand it state . . . that you have to draw every district no matter how noncompact that district might [sic] be in that particular area." Representative Fitch was well aware that the issue was more than population majority. Taking the position that the Republicans had failed to show that the district was required by the Voting Rights Act is different from acknowledging that it was a "minority" district. The colloquy shows no racially discriminatory purpose of Representative Fitch.

Indeed, from the very beginning of the process Fitch was very cognizant of the requirements of the Voting Rights Act. His first instruction to staff as the House districting process started was to ensure that all existing majority/minority remained such districts. He monitored this process with staff at frequent intervals, and was continually briefed by staff on these minority districts. Representative Fitch also examined with staff alternatives for other, new minority districts.

As to Representative Green, nothing in the transcript or record indicates that he voted against alternative plans "because he viewed them as helping the Republican party." He merely asked "why have you professed this interest in the minority districts . . . how does the Republican position stand in regards to this Plan versus the other one . . . what advantage does this Plan have for your party over the prior one?" Remember, as discussed in paragraph 15 of this reply, just the next day, 27 of the 33 votes for the Pope amendment came from Republicans who would the next day vote against HB776, a bill open-

scored by two black representatives to set up districts for the Winston-Salem/Forsyth County Board of Education. That bill had been discussed in committee on July 1, 1991.

As discussed in paragraphs 33 and 43 above, Senator Ballance had been concerned that the Daughtery plan, far from adding an additional black district in the Northeast, would in fact threaten the electability of the one existing black district in the Northeast. This was certainly a valid reason under the Voting Rights Act to reject a plan. As to Ballance's comments about alliances, this political philosophy can hardly be held to be racially discriminatory.

The ACLU considers Michaux's analysis to be "outrageous". Representative Michaux, a former United States Attorney, had been a candidate for the Second Congressional District seat in 1982, winning the first primary but losing in a runoff. Michaux had been the member of the General Assembly whose continued electoral success had been the electoral success which the Supreme Court stated in Shabazz did not require single-member districts in Durham. Certainly, his expertise requires some deference, and not just a dismissal as "outrageous". Michaux had then presented no evidence about minority electability in either of the two Balmer plans that had been under consideration. Although there had been some discussion at public hearings about the goal of having a second black district, Michaux clearly viewed Balmer's plan as threatening to minority political influence, when he said "... you are ... saying you all have got what you want ... now go about your business and leave us alone." These comments can hardly be used to show a racially discriminatory purpose, there [sic] were merely Mi-

chaux's political analysis of the impact on minorities of the Balmer plans.

Trying to maximize black influence in the legislature by having a mix of black representatives with white representatives who because of black constituencies are willing to form coalitions cannot be a racially discriminatory purpose even if one disagrees with the strategy.

To call the incumbent black legislators the enablers of intentional racial discrimination against blacks flies in the face of the entire record before you.

¶48) North Carolina cannot carry its burden of demonstrating the absence of racially discriminatory intent in the formulation and passage of each of the three pending plans. Moreover, each plan is itself in clear violation of Section 5 . . . we strongly urge you to . . . object." (ACLU page 44)

The evidence in the State's submittal and in this reply is to the contrary. The Attorney General should interpose no objection to any of the three plans before you.

Exhibit 26

[Excerpts from submission by State of North Carolina to the United States Department of Justice during preclearance process for Chapter 601 (first Congressional Plan)]

C-27R-3 Proposed Minority Districts

House/Senate/Cong: Congress

Author: Rep. Balmer

Computer Name: Balmer Congress 6.2
(and Block Level rev.)

Where and When Proposed:

House Committee—presented 6/3/91
PCS 6/21/91 (block)
6/25/91—House floor

Action taken: motion to adopt proposed committee
substitute defeated (5-16)
floor amendment defeated (36-72)

Geographic Area involved:

- 1) Franklin—Pasquotank—Lenoir
- 2) Mecklenburg—New Hanover

Includes area covered by §5: yes

Percent Black VAP: #2 53.75%
#12 45.32%

Percent Black VR: #2—53.52%
#12—46.80%

Percent Am. Ind. VAP: #2 < 1%
#12 7.50%

Percent Am. Ind. VR: #12—7.79% "other"

Black Legislators Who Supported: None ¹

¹ Although the House Committee vote on June 21, 1991 shows Rep. Barnhill voting in favor of this plan, he voted against it on the floor on June 25, 1991, and he says that he never supported this plan and did not intend to vote for it.

Notes: The block level refinement of this plan lowered the population deviations to one. It did not significantly affect black percentages.

Reasons why not adopted:

HOUSE:

1. Second "minority" district did not have effective minority voting majority.

2. Charlotte to Wilmington district, including 200 miles of both highly urban and highly rural voters, would have been impossible to represent well and very difficult to campaign in. Rest of plan also very uncompact.

3. Plan dramatically decreased black influence in districts 4, 7, 8 & 9 as drawn under Chapter [sic] 601.

SENATE: Not presented to Senate for a vote.

C-27R-5 Proposed Minority Districts

House/Senate/Cong: Congress

Author: Rep. Balmer

Computer Name: Balmer Congress 7.4/

Balmer Congress 7.8

Where and When Proposed: Introduced as HB1310
on July 9, 1991.

Action taken: A motion to suspend the rules to allow early reading and assignment of committee when 1310 was filed on 7/8/91 filed (39-63). The House Congressional Redistricting Committee did not meet again after HB 1310 was assigned to it on July 9, 1991.

Geographic Area involved: #2 Nash—Pasquotank—Bladen
#3 Forsyth—Halifax—Wake

Includes area covered by §5: yes

Percent Black VAP: #2 —49.66%

#3 —52.59%

Percent Black VR (if whole precincts used): #2—54.11%

#3—53.03%

JA-141

Percent Am. Ind. VAP: #2—0.47%
#3—0.71%

Percent Am. Ind. VR (if whole pcts used): #2—0.34%
#3—0.95%

Black Legislators Who Supported: none

Notes: District #2 has less than [sic] 50% black VAP but has the military bases in both Cumberland and Onslow Counties.

Reasons why not adopted:

HOUSE:

1. Not presented until too late.
2. District #2 is too sprawling and uncompact to allow for effective campaigning or representation.
3. The plan emasculates black voting strength in areas where blacks have been able to influence Congressmen (for example Chapter 601's 4th, 5th and 8th districts).

SENATE: Never presented to Senate.

C-27R-1 Proposed Minority Districts

House/Senate/Cong: Congress

Author: Rep. Justus

Computer Name: JUSTUS'S CONGRESSIONAL PLAN

Where and When Proposed: Draft presented at public hearing 6/13/91.

Offered in House Cong Committee on 6/21/91.

Offered as House floor amendment on 6/26/91.

Action taken: Motion to adopt proposed committee substitute defeated on 6/21/91. (7-16)
House floor amendment defeated. (28-78)

Geographic Area involved:

Alamance—Perquimons—Wayne/Greene

Includes area covered by §5: yes

Percent Black VAP: 52.55%

Percent Black VR (if whole precincts used): 51.12%

Percent Am. Ind. VAP: 0.64%

Percent Am. Ind. VR (if whole pcts used): 0.84% "other"

Black Legislators Who Supported: none

Notes: He has only one black district and it is not better than the black district in the adopted plan (51.12% black VR vs 51.34% black in Chapter 601).

Reasons why not adopted:

HOUSE: Did not improve minority representation (among other reasons)

SENATE: Not presented to Senate for vote.

C-27R. Other Material Concerning The Purpose Of The Plan

The purpose of the Committee chairmen in supporting the conference committee report for S.B. 16, which was then enacted and ratified as Chapter 601, was to enact legislation that redistricted North Carolina's congressional seats, including its new 12th seat, in a manner that was fair and legal and in compliance with the criteria that had been adopted by the committees.

Among other goals, the Chairman tried to keep precincts whole, to avoid dividing counties into more than two districts, and to give black voters a fair amount of influence by creating at least one district that was majority black in voter registration and by creating a substantial number of other districts in which black voters would exercise a significant influence over the choice of congressmen.

Only three plans were offered as alternatives to the six presented by the chairmen. Representative Justus' plan, see Attachment C-27R-1 and C-27R-2, presented first at the June 13, 1991 public hearing created only one black district, and it did not have a higher black percentage of

registered voters than did the adopted plan (51.12% and 51.34% VR). It was never presented in the Senate for a vote. It was not proposed in the House to improve minority representation, and it would not have been an improvement over the adopted plan.

Representative Balmer's first plan, Balmer 6.2 (and the block level refinement of it), Attachments C-27R-3 & C-27R-4, was presented first in the House Congressional Redistricting Committee on June 3, 1991 and was not presented at any time to the Senate. No black constituents or General Assembly members expressed support of it. Although it purported to have two minority districts, the second one started [in] urban Charlotte and meandered over 200 miles, mostly through rural farming areas, to Wilmington. This district was only 45.32% black in voting age population. Its label as a "minority district" depended on the cohesion of black and Native American voters, and no such pattern was evident. See part C-28D below. Further, this plan dramatically decreased black influence in the 4th, 7th, 8th and 9th districts. Finally, the second "minority" district was so sprawling that it was most often described as "ludicrous" or "absurd". No black or Native American legislator supported it.

Representative Balmer's second plan (Balmer 7.8), Attachments C-27R-5 and C-27R-6, was never even seen by the Senate chairmen before they voted on the Conference Committee Report on S.B. 16. Rep. Balmer did not attempt to introduce it in the House until July 8, 1991, the day that the House voted to adopt the Conference Committee Report on S.B. 16. It was never presented to any Committee nor discussed with the House Chairmen, and it is doubtful that any plan, no matter what its content, would have been seriously considered under those circumstances.

Although one of Balmer's black districts in this plan (#3) was reasonably compact, the second (#2) sprawled all over eastern North Carolina and looked like a river

with many tributaries running from Virginia in the north to Wilmington in the south. It would be exceedingly hard to campaign effectively in this area, or to represent it well, since in many areas it is only one precinct wide.

In addition, this plan creates only four districts in which more than 15% of registered voters are black, as opposed to eight in Chapter 601, and only two of those have above 20% of registered voters black as opposed to six. Thus this plan seriously deminishes [sic] black influence in the remaining districts, for example districts 4, 5 and 8 in Chapter 601.

No minority member of the House voted in favor of suspending the rules to allow first reading of HB1310 on July 8, 1991 and none expressed support for this plan.

It is apparent that it is only possible to create one majority black district that is reasonably compact, and that is what Chapter 601 does.

C.4. It has been alleged that the single proposed majority black Congressional district does not provide the minority community with a realistic opportunity to elect a candidate of its choice. We would appreciate any response you can provide to this allegation.

Response complied [sic] by L. Winner:

The primary analysis of the statistics concerning this district is contained in the portion of the response compiled by Gerry Cohen.

I have discussed with the Senate and House Chairmen the basis of their conclusions that the district as enacted had an effective black voting majority.

Sen. Winner reports that he relied on logic and the results of the Gantt election. The numbers are such that black voters will definitely control the Democratic primary, and enough percentage of white voters will vote for a black Democrat over a white Republican that

if blacks vote as a bloc, the black candidate will win the general. No one has ever suggested to him that this district does not have an effective black voting majority.

Sen. Walker reports that because a majority of the registered voters are black, he believe [sic] a black candidate could be elected. No one ever suggested to him that the district as enacted does not have an effective black voting majority.

Sen. Johnson primarily relied on the raw numbers and the results of the Gantt/Helms election, which he thought was an excellent predictor for that area. If anything it should understate the black voting strength since Helms was extremely popular and well entrenched with whites in the area (he lives in Raleigh which is close by) and Gantt was from urban Charlotte which is distant and dissimilar from the small town and rural areas contained in this district.

Sen. Johnson also discussed the district with Rep. Hardaway (black; Halifax) who thought that the district had a high enough black percentage to allow blacks to control the outcome. He was thinking of running and was convinced he could win in the district as drawn.

Rep. Fitch discussed the district with several black members of the legislature and with several black members of the public. None of them suggested to him that a black candidate could not win in the district. He also relied on the numbers and the results of the Gantt election in that district. He believes that the fact that the district has been labeled a black district and will be perceived as a black district will in some ways become a self fulfilling prophesy [sic]. In addition he believes that blacks, who are a majority of the voters, will polarize to support a black candidate. The only question is turnout and blacks in that area have demonstrated on numerous occasions that they do turn out and vote in high publicity elections when there is a viable black candidate. Rep.

Fitch observed high black turnout for Mickey Michaux (1982), Ken Spaulding (1984), Howard Lee (1972), and Eva Clayton (1968) all running for congress in that general area (from a majority white district). There was also high turnout for Jesse Jackson in the Presidential Primary in 1988 and for Harvey Gantt in both the second primary and the general election in 1990.

He therefore concluded that if 57% of the registered Democrats are black, a black candidate can win the Democratic primary, and enough black voters will vote for the black candidate in the general election that, combined with even a low number of white votes, a black can win the general election.

Rep. Bowen had no one suggest to him that this Congressional district did not have a high enough black percentage to allow black voters to control the outcome of the election. He primarily relied on the staff's assessment that the district had a sufficient black population to be an effective black majority district.

Rep. Hunt believed that the district had an effective black voting majority because of the results of the Gantt/Helms race. Also, the black Representatives from throughout the area all seemed to believe that a black candidate could win in the district as drawn, so he deferred to them.

I know of no case that holds that a higher percentage of black voters is required to create a black district, particularly when no minority "community" has been fractured. There is no evidence of any discriminatory purpose in the configuration of this district. Indeed, Gerry Cohen and I continued to try to increase the black percentage in the district which we did in several of the successive base plans. The district is plainly not retrogressive. Since it has not discriminatory purpose, is not retrogressive, and is certainly not a "clear" violation of §2, it should not be the subject of an objection.

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Exhibit 27

[Letterhead of U.S. Department of Justice, Civil Rights Division,
Office of the Attorney General, Washington, D.C. 20035]

DEC 18 1991

Tiare B. Smiley, Esq.
Special Deputy Attorney General
P.O. Box 629
Raleigh, North Carolina 27602-0629

Dear Ms. Smiley:

This refers to chapter 675 (1991), which provides for the 1991 redistricting and a change in the method of election from 42 single-member districts and 30 multi-member districts to 75 single-member districts and 20 multimember districts for the House of Representatives; Chapter 676 (1991), which provides for the 1991 redistricting plan and a change in the method of election from a 22 single-member districts and 28 multimember districts to 34 single-member districts and 8 multimember districts for the Senate; and Chapter 601 and Chapter 761 (1991), which provide for the increase from eleven to twelve congressional districts for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for more information on November 5, 1991; supplemental information was received on November 18, 20, 21, 25, 26 and 27, and December 4, 10, 12 and 13, 1991.

We have carefully considered the information you have provided, as well as census data and information and comments from other interested persons. At the outset, we note that 40 of North Carolina's 100 counties are covered under the special provisions of Section 5 of the Voting Rights Act. As it applies to the redistricting process, the Voting Rights Act requires the Attorney

General to determine whether the submitting authority has sustained its burden of showing that each of the legislative choices made under a proposed plan is free of racially discriminatory purpose or retrogressive effect and that the submitted plan will not result in a clear violation of Section 2 of the Act. In the case of statewide redistrictings such as the instant ones, this examination requires us not only to review the overall impact of the plan on minority voters, but also to understand the reasons for and the impact of each of the legislative choices that were made in arriving at a particular plan.

In making these judgments, we apply the legal rules and precedents established by the federal courts and our published administrative guidelines. See, e.g., 28 C.F.R. 51.52 (a), 51.55, 51.56. For example, we cannot preclear those portions of a plan where the legislature has deferred to the interests of incumbents while refusing to accommodate the community of interest shared by insular minorities, see, e.g., *Garza v. Los Angeles County*, 918 F.2d 763, 771 (9th Cir. 1990), *cert. denied*, 111 S. Ct. 681 (1991); *Ketchum v. Byrne*, 740 F.2d 1398, 1408-09 (7th Cir. 1984), *cert. denied*, 471 U.S. 1135 (1985), or where the proposed plan, given the demographics and racial concentrations in the jurisdiction, does not fairly reflect minority voting strength. *Thornburg v. Gingles*, 478 U. S. 30 (1986); *Hastert v. State Board of Elections*, ____ F. Supp. ____ (N. D. Ill., Nov. 6, 1991), 1991 WL 228185; *Wilkes County, Georgia v. United States*, 450 F. Supp. 1171, 1176 (D.D.C. 1978), *aff'd. mem.*, 439 U.S. 999 (1978).

Such concerns are frequently related to the unnecessary fragmentation of minority communities or the needless packing of minority constituents into a minimal number of districts in which they can expect to elect candidates of their choice. See 28 C.F.R. 51.59. We endeavor to evaluate these issues in the context of the demographic changes which compelled the particular

jurisdiction's need to redistrict and the options available to the legislature. Finally, our entire review is guided by the principle that the Act ensures fair election opportunities and does not require that any jurisdiction guarantee minority voters racial or ethnic proportional results.

With this background in mind, our analysis shows that, in large part, the North Carolina House, Senate and Congressional redistricting plans meet the Section 5 preclearance requirements. Each plan, however, has particular problems which raise various concerns for us under the Voting Rights Act. We describe each of these problem areas separately below.

Respecting the House plan, the proposed configuration of district boundary lines in the following three areas of the state appear to minimize black voting strength: the Southeast area, involving Sampson, Pender, Bladen, Duplin, New Hanover, Wayne, Lenoir and Jones Counties; the Northeast area in which the state proposes to create District 8; and Guilford County.

In general, it appears that in each of these areas the state does not propose to give effect to overall black voting strength, even though it seems that boundary lines logically could be drawn to recognize black population concentrations in each area in a manner that would more effectively provide to black voters an equal opportunity to participate in the political process and to elect candidates of their choice. Another factor which appears to adversely impact on minority voting strength, by limiting the number of majority minority districts, was the state's decision to manipulate black concentrations in a way calculated to protect white incumbents.

In the Southeast area of the state, the state was aware of the significant interest on the part of the black community in creating districts in which they would constitute a majority. In fact, alternatives providing for two additional black majority districts were presented to

the legislature. Rather than using this approach to recognize black voting strength, however, the proposed plan submerges concentrations of black voters in several multimember, white majority districts. Our own analysis suggests that a number of different boundary line configurations may be possible which more fairly recognize black population concentrations and provide minority voters an opportunity to elect candidates of their choice in at least one additional district.

In the Northeastern portion of the state, District 8 seems to have been drawn in such a way as to limit unnecessarily the potential for black voters to elect representatives of their choice. In spite of the 58 percent black population majority, serious concerns have been raised as to whether black voters in this district will have an equal opportunity to elect their preferred candidate, particularly given the fact that only 52 percent of the registered voters in the district are black. Our analysis indicates that a number of different options are available to draw District 8 in a manner which provides blacks an equal opportunity to participate in the electoral process (e.g., including in District 8 black concentrations in adjoining districts).

Similarly, in Guilford County the proposed plan fails to recognize black population concentrations, although reasonable configurations of boundary lines would permit an additional district that would provide black voters the opportunity to elect their candidates of choice. While we have noted the state's assertion that the division of the black community in Guilford County into several districts enhances black voting strength by providing black voters an opportunity to influence elections in additional districts, it appears that the plan in fact was designed to ensure the re-election of white incumbents. This conclusion is bolstered by what appears to be similarly motivated decisions of the legislature involving other areas of the state, such as in Mecklen-

burg County. There, the state drew two minority House districts, while the minority population appears to be sufficiently concentrated to allow for the drawing of three districts in which black voters would have an opportunity to elect candidates of their choice. While we are aware that Mecklenburg is not a county subject to the preclearance requirements of Section 5, information regarding the choices of boundary line changes in the county is relevant to our review of the concern that purposeful choices were made throughout the redistricting processes that adversely impact minority voting strength.

Respecting the Senate redistricting plan, the state has proposed district boundary lines in the southeast region of the state that appear to minimize black voting strength, given the particular demography of this area. Although boundary lines logically could be drawn to recognize black population concentrations in a manner that would more effectively provide to black voters an equal opportunity to participate in the political process and to elect a candidate of their choice, the proposed districts seem to be a result of the state's decision to use concentrations of black voters in white majority districts to protect white incumbents. Black citizens from this area testified that they felt a black majority single-member district could be fairly drawn, and alternatives providing for a black majority district were presented to the legislature. It appears, however, that concentrations of black voters have been submerged in several white majority districts. Our own analysis suggests that a number of different boundary line configurations may be possible which more fairly recognize black population concentrations and provide minority voters an opportunity to elect candidates of their choice in at least one additional district.

Respecting the congressional redistricting plan, we note that North Carolina has gained one additional con-

gressional seat because of an increase in the state's population. The proposed congressional plan contains one majority black congressional district drawn in the northeast region of the state. The unusually convoluted shape of that district does not appear to have been necessary to create a majority black district and, indeed, at least one alternative configuration was available that would have been more compact. Nonetheless, we have concluded that the irregular configuration of that district did not have the purpose or effect of minimizing minority voting strength in that region.

As in the House and Senate plans, however, the proposed configuration of the district boundary lines in the south-central to southeastern part of the state appear to minimize minority voting strength given the significant minority population in this area of the state. In general, it appears that the state chose not to give effect to black and Native American voting strength in this area, even though it seems that boundary lines that were no more irregular than found elsewhere in the proposed plan could have been drawn to recognize such minority concentration in this part of the state. *Jeffers v. Clinton*, 730 F.Supp. 196, 207 (E.D. Ark. 1989), *affirmed*, 111 S. Ct. 662 (1991).

We also note that the state was well aware of the significant interest on the part of the minority community in creating a second majority-minority congressional district in North Carolina. For the south-central to southeast area, there were several plans drawn providing for a second majority-minority congressional district, including at least one alternative presented to the legislature. No alternative plan providing for a second majority-minority congressional district was presented by the state to the public for comment. Nonetheless, significant support for such an alternative has been expressed by the National Association for the Advancement of Colored People (NAACP) and the American Civil Liberties Union

(ACLU). These alternatives, and other variations identified in our analysis, appear to provide the minority community with an opportunity to elect a second member of congress of their choice to office, but, despite this fact, such configuration for a second majority-minority congressional district was dismissed for what appears to be pretextual reasons. Indeed, some commenters have alleged that the state's decision to place the concentrations of minority voters in the southern part of the state into white majority districts attempts to ensure the election of white incumbents while minimizing minority electoral strength. Such submergence will have the expected result of "minimiz[ing] or cancel[ling] out the voting strength of [black and Native American minority voters]." *Fortson v. Dorsey*, 379 U.S. 433, 439 (1965). Although invited to do so, the state has yet to provide convincing evidence to the contrary.

In light of the considerations discussed above, cannot conclude, as I must under the Voting Rights Act, that the state's burden has been sustained in this instance with respect to the three proposed plans under review. Therefore on behalf of the Attorney General, I must object to the 1991 redistricting for the North Carolina State House, Senate, and Congressional plans to the extent that each incorporates the proposed configurations for the areas discussed above.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed 1991 House, Senate and Congressional redistricting plans have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition you may request that the Attorney General reconsider the objections. However, until the objections are withdrawn or a judgment from the District of Columbia Court is obtained, the 1991 redistrictings for the North Carolina House,

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Senate and Congressional Plans continue to be legally unenforceable. *Clark v. Roemer*, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of North Carolina plans to take concerning these matters. If you have any questions, you should call Richard Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,

/s/ John R. Dunne

John R. Dunne

Assistant Attorney General
Civil Rights Division

Exhibit 33

[January 10, 1992 Article from *The Raleigh News and Observer*,
"2 Black Districts Urged," "Proposal Favors N.C. Democrats"]

By Van Denton, Staff writer

Democratic congressmen and key state legislatures are showing a lot of interest in a proposal that would create two black congressional districts in North Carolina, including one that would stretch from Durham along the Interstate 85 corridor all the way to Charlotte.

In a private meeting Wednesday night with two top-ranking Democratic legislators, the congressmen came out in support of creating two minority districts as an alternative to defending the current plan in court.

Meanwhile, most of the 19 black legislators in the General Assembly have joined the North Carolina NAACP and other black groups in pushing for the creation of two black districts.

Both developments are shifts from the original positions of the congressmen and black legislators. When the congressional plan was rejected by the U.S. Justice Department last month, most members of both groups argued that the state should stand by its plan.

But now alternative proposals have been developed indicating that a second black district can be drawn without giving too many congressional seats to Republicans. And that prospect has more and more people thinking that's the way to go.

Legislative leaders still haven't discarded a previous congressional plan creating only one black district. But lawmakers appear ready to junk it next week when they reconvene for a special session on redistricting.

State Sen. Henson P. Barnes, the Senate's Democratic leader, said it appeared unlikely that the legislature would appeal the Justice Department's rejection to the

courts. A final decision may be made Monday when the full General Assembly reconvenes.

"The information we are getting is we cannot be successful in court on our present plan," Barnes said in an interview Thursday. "That being the case, my inclination is not to go to court."

The Justice Department rejected the original congressional plan because it failed to draw two congressional districts where racial minorities would be in the majority. It said the plan violated the Voting Rights Act by diluting the voting strength of minorities.

Since then, new ways of creating two black districts have been developed. The one getting the most attention is one designed initially by John Merritt, an aide to U.S. Rep. Charles G. Rose III, and since endorsed in concept by the National Association for the Advancement of Colored People.

Some observers have called the new proposal the "I-85 District." The district would begin in the black community in Durham, stretch up into Vance and Warren counties, then follow the Interstate 85 corridor southwest through Greensboro all the way to Charlotte.

Others have said a more appropriate nickname would be the "Aleutian Islands District" since it connects pockets of black communities in Durham, northeastern North Carolina, Greensboro, and Durham—communities that otherwise would be isolated in a sea of white voters—in a pattern resembling the Aleutian Islands off the coast of Alaska.

The proposal also creates a black congressional district in Eastern North Carolina—like the rejected plan does—but it would no longer include the black sections of Durham. Instead, it would extend into black communities in the southeastern part of the state.

Merritt said blacks would make up 56 percent of the

population in both districts and 52 percent of registered voters.

But a key attraction of the proposal is that instead of hurting Democratic congressmen, who now hold seven of the state's 11 congressional seats, it could result in Democrats gaining seats.

In fact, some think that after adding the new 12th congressional district, Democrats would win eight to nine of the 12 seats.

All of the state's Democratic congressmen, except for U.S. Rep. Walter B. Jones Sr. of Farmville, attended the unpublicized Wednesday night meeting with legislative leaders.

"They were trying to talk us out of going to court [to fight for the original plan]," Barnes said. "They had been crunching some figures themselves and had come to the conclusion that a second minority district could be created. When they came to that conclusion, they realized it hurt their chances in court."

Besides Barnes, other legislators attending the meeting were House Speaker Daniel T. Blue Jr. and most of the House and Senate redistricting chairmen.

The switch among black legislators came after a series of meetings Wednesday with members of other black groups, including the NAACP, the N.C. Black Leadership Caucus and the American Civil Liberties Union.

State Sen. James F. Richardson of Charlotte, chairman of the Legislative Black Caucus, said he did not think that white Democratic legislators would oppose creating two black congressional districts.

"I don't think they will feel threatened," Richardson said. "The Democrats have stood with us pretty well in the General Assembly."

State Rep. Robert Grady, a Republican from Jacksonville, said a second black district appears likely now that black legislators are calling for it.

"I don't think Democrats would fight the Justice Department and black legislators," Grady said. "To stand against the black caucus would be an extremely difficult position for them to be in."

Exhibit 38

[Excerpts from submission by State of North Carolina to the
United States Department of Justice during the
preclearance process for Chapter 7]

1992 CONGRESSIONAL BASE PLAN #10 is based in large part on the plan presented by Mary Peeler of the NAACP at the public hearing held in January 8, 1992. Modifications were made to that proposal to make each of the two black districts more homogeneous and to increase their black populations. Specifically, rural Vance, Caswell, Person and Granville Counties were removed from District 12, and the urban portions of Forsyth and Gaston Counties were substituted. This had the effect of leaving the 12th District somewhat more compact and more urban in character. As the 12th District is currently configured, 80% of its population lives in cities of 20,000 or more. These changes had the effect of increasing the black population of the district as proposed by the Peeler proposal from 56.13% black and 56.63% black. Given that 54.71% of the district's registered voters are black and an estimated 67.1% of the registered Democrats are black, this district, as modified from the one Ms. Peeler initially proposed, plainly has as effective black voting majority.

The major modification to the 1st District as Ms. Peeler proposed it was to add majority black portions of Vance County to it. By removing portions of the district with higher white percentages, the chairmen were able to boost the black population in that district from 56.05% black to 57.26% black. This district is now a predominantly rural district with 82% of its population living outside cities with 20,000 or more. As noted in part 27N above, the black population of the 1st District has been increased from 55.69% in the plan previously approved in the December 18, 1991 letter from the Attorney General, to 57.26% black in the enacted plan. Black

voter registration has been increased from 51.34% to 52.41%

No minority citizen suggested to either Congressional redistricting committee or to their chairmen that either of those districts lacked an effective black voting majority.

A handful of alternative plans were presented either in the House or Senate Committees, as floor amendments, or at the public hearing that had two majority black districts or two majority Native American plus black districts.

In some plans the second minority district relied on cohesiveness between black and Native American voters. See, for example the Justus proposal, Attachment 2C/27R-3, made to the House Committee and the plan Vann Ellison presented at the public hearing, included in Attachment 2C/28F-2 public hearing transcript. It is at best unclear whether those districts meet the *Thornburg v. Gingles* threshold test of being majority minority in voting age population, since the voting records produced with the State's submission of Chapter 601 do not demonstrate that the two groups regularly vote for the same candidates. It is noteworthy that Mary Peeler of the NAACP specifically requested at the public hearing that the legislature not rely on black and Native American cohesiveness in creating a second minority district. See attachment 2C/28F-2 at page 39. The enacted plan removes any doubt by creating two districts which are majority black in voting age population and voter registration without any reliance on Native American voters.

A few alternate plans were presented which had two majority black districts, namely the Kimbrough plan (presented at the public hearing, transcript in Attachment 2C/28F-2, the Flaherty plan, Attachment 2C/27R-4, the Peeler plan, Attachment 2C/27R-2 and two of the Balmer plans, Attachments 2C/27R-1(c) and (d)[.] None of

these had significantly higher black voter registration or voting age populations in the minority districts than does the enacted plan, except possibly Balmer Plan 8.1. See attachment 2C/27 R-1(c). It has an eastern black district that is 58.47% black total population. Representative Balmer accomplished this by including in his majority black district black voters from Wake County. This approach has two disadvantages. First, it combines a very urban population with a predominantly rural remainder of the district. Second, it removes Wake County voters from the 4th District, an area in which racially polarized voting is low, and in which black voters already enjoy a substantial opportunity to elect public officials of their choice. See further discussion of the 4th district in 2C/27N of this submittal. It is noteworthy that representative Balmer did not seek to have this plan presented to either the House or Senate Redistricting Committee in either the Regular or Extra Session, nor did he offer it as a floor amendment. It had no known black support. None of these plans give black voters a materially better opportunity to elect congressmen of their choice than does the enacted plan.

Representative Green offered a floor amendment which would have moved four precincts in Pitt County, including the one in which Congressman Walter Jones resides, from District 1 to District 2 and would have moved like number of people in Edgecombe County from the District 2 to District 1. See Attachment 2C/27R-5. This Amendment was opposed by Representative Fitch and was defeated in the House by a voice vote. The effect of the Amendment would have been to lower the black population in District 1 by .25% and would have placed Pitt County into three different congressional districts. There was significant sentiment in the House and in the Senate that it was better to have Pitt County in only two districts, especially since further division of it did not increase black percentages. In addition, Congressman Jones, who resides in the minority district

which Mr. Dunne approved in his December 18, 1991 letter, has said that he does not intend to run for reelection.

It was pointed out that since there is no residency requirement for congressional candidates, if he changes his mind, he can run again without regard to which district his home precinct is in.

Representative Flaherty's plan, Attachment 2C/27R-4, purports to create two black districts and what he terms an additional "minority influence district." Under current case law, the Voting Rights Act does not require legislative bodies to connect together minority populations into "influence districts." See *Gingles v. Edmisten*, 590 F. Supp. 345, 381 (E.D.N.C. 1984) (three judge court); *Hastert v. State Board of Elections*, 777 F. Supp. 634, 651-4 (N.D.Ill. 1991); *Turner v. Arkansas*, R-C-91-295 at pp. 32-40 (E.D.Ark. 1991).

In the case of the State's revised submittal, Chapter 7, it was the judgment of the legislature, including the black Speaker of the House and the black Chairman of the House Congressional Redistricting Committee, that black influence was greatest with, in addition to two majority black seats, the black population being greater than 20% in four districts (numbers 2, 3, 4, and 8). This was viewed by blacks as better than having 41.33% of one district and 20% of only one other district as in the Flaherty Congressional Plan, Attachment 2C/27R-4.

It is patently clear that Chapter 7 has an enhancing and not a retrogressive effect. It is also clear that its overriding purpose was to comply with the dictates of the Attorney General's December 18, 1991 letter and to create two congressional districts with effective black voting majorities.

Exhibit 41

[Editorial by Dan Blue, Speaker, North Carolina House of Representatives, submitted to various North Carolina newspapers following ratification of Chapter 7]

Justice Department has the last word

General Assembly defends its plan

By DANIEL T. BLUE

At first glance, the congressional redistricting plan approved by the General Assembly seems unreasonable and unnecessarily contorted. In short, it is an ugly map.

We agree. It is an ugly map. But it is the only map we could draw and still satisfy the U.S. Justice Department's interpretation of the Voting Rights Act.

There have been literally dozens of plans offered and all were considered by the redistricting chairmen, and every member had a chance to offer his or her plan in the committee debate and on the house floor. Many of the plans look better to the eye. [photo of Mr. Blue appears beside this paragraph]

Much attention has been focused on one submitted by the League of Women Voters. That map also seems to make perfect sense, and we agree it looks far better than ours. But we believe it would never be approved by the Justice Department. The two black districts it creates have less than 50 percent black population. This clearly does not allow the black citizens in those areas to elect a representative of their choice. In fact, the Justice Department balked at a minority district in the State House plan that has 58 percent black population.

The League of Women Voters' plan also counts native American voters in the southeast to constitute a minority district. Voting patterns show that native Americans do not vote with black citizens in that area and therefore

should not be counted in creating a "majority-minority district."

North Carolina's minority population is not sufficiently concentrated in any one area to draw a compact minority congressional district, which must contain 550,000 people. The plan passed by the General Assembly in June created one majority-minority district in the eastern part of the state, coursing through 25 counties. We decided at that time that it would be impossible to draw another majority-minority district without stringing together small pieces of black voters all over the state.

We still think that. The Justice Department rejected that plan, however, and pointed out that we could have drawn another minority district running from inner-city Charlotte through hundreds of rural towns and ending at Carolina Beach. We still believe that the Voting Rights Act was designed to prevent the fracturing or packing of the black vote, but not to require stringing black voters together to create a district and in the meantime helping Republicans get elected. We lost on that sensible interpretation.

Many arguments against our plan are good political arguments as to why Congress either needs to amend the Voting Rights Act or why we need to elect a president who will appoint a different head of the Civil Rights Division of the Justice Department.

When we reconvened this special session, we had one major goal when drawing another congressional redistricting plan—satisfy the Justice Department by drawing two majority minority districts and try to retain in them some community of interest.

The map we have drawn does that. One minority district is still in Eastern North Carolina and the second is an urban district, which runs along the Interstate 85 corridor of our state. That district was first suggested by Representative David Balmer of Charlotte, a Republican.

It is not a pretty district but we believe that black voters in the urban areas of Charlotte, Greensboro, Winston-Salem and Durham have much more in common than voters in West Charlotte, Whiteville and Carolina Beach.

We also believe the plan maintains a partisan balance in the state's congressional delegation. It creates four districts, including the two black districts, that are likely to elect Democrats. It creates three districts that are likely to elect Republicans. It creates five districts that could go either way.

We believe we drew a good, fair, congressional redistricting plan last June. The Justice Department decided to play partisan politics with the people of North Carolina and rejected that plan. The bureaucrats in Washington continue to think they know best about what we need in this state.

We have done the best we can to draw new congressional districts. We also understand the criticism of the plan. We now hope you understand how we did it.

Exhibit 47

[Excerpts from *Regional Landscapes of the United States and Canada*,
 Stephen S. Birdsall and John W. Florin (Wiley & Sons 2d Ed.),
 Borden Devon Dent, Cartographer, Georgia State University]

. . . .

**[239] URBAN COALESCENCE AND
 ECONOMIC GROWTH**

One of the striking characteristics of the South Atlantic States, indeed of the entire Southeast, is the region's abundance of small- and medium-size cities and its shortage of very large cities. Aside from the southern margins of Megalopolis, the Atlantic southern lowlands' largest city is Atlanta (1,803,600 in 1976 estimate). [footnote omitted] Other cities in the South roughly the size of Atlanta are relatively few and scattered about the periphery of the larger region: Miami (1.44 million) and Tampa-St. Petersburg (1.38 million) in Florida, Dallas (1.42 million) and Houston (2.4 million) in Texas, and New Orleans (1.1 million) in Louisiana. Within the Atlantic southern lowlands, however, there are a large number of small- and medium-size cities, each supported by local manufacturing and service activities that typify the region. Richmond (Virginia), Durham and Winston-Salem (North Carolina) contain production and warehouse facilities for the largest tobacco firms in the country. Greensboro and Burlington (North Carolina), Danville (Virginia), Greenville and Spartanburg (South Carolina), and Columbus (Georgia) are among the most populous of a large number of small cities in the region known for their textile industries, as is Roanoke (Virginia) immediately west of the Blue Ridge. In a similar manner, Lynchburg and Martinsville (Virginia), Thomasville, Lexington, and High Point (North Carolina), Georgetown and Charleston (South Carolina), and Savannah (Georgia) are only a few of the region's urban centers containing paper or furniture industries. None of these cities, however, nor any of the port cities along

the Atlantic coast generated the growth rates of Atlanta (within the region), Miami, Tampa-St. Petersburg, and the Texas cities. The growth stimulus has been too narrow, too recent, and, until recently, not from the most dynamic industries.

These numerous smaller urban centers form several significant clusters in the region, the most distinctive of which is called the "Piedmont Urban Crescent." It is composed of the cities located in a broad arc between Greenville, (South Carolina) and Raleigh (North Carolina) and contains such urban nodes as Spartanburg (South Carolina) and Charlotte, Winston-Salem, High Point, Greensboro, Burlington, and Durham (North Carolina [Figure 9-4]).

* * * *

[241] Such a grouping of smaller cities can often function as a large, sprawled urbanized area if transportation connections are constructed to support the degree of interaction required. The map showing highway traffic flows in the Atlantic southern lowlands is an indicator that such support does exist (Figure 9-5) [omitted].

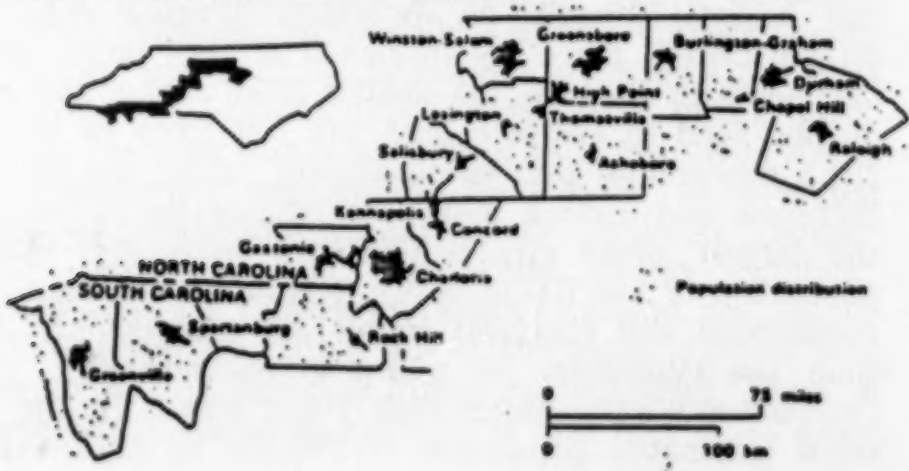
Additional growth has been derived from the Piedmont Crescent's relative location within the region. The Crescent is located about half the distance between Washington, D.C., at the southern end of Megalopolis, and Atlanta, Georgia, an extremely dynamic regional growth center. Since the influence of both large cities declines with distance, the smaller cities of the Crescent do not need to compete with the full force of either city's tremendous pull on consumers, labor, and manufacturing and service industries. Within the Crescent, the largest single city is Charlotte (estimated SMSA population of 594,700 in 1976); it is rapidly becoming a commercial and financial center for the region. Less than 145 kilometers (90 miles) to the northeast, the Greensboro-Winston-Salem-High Point SMSA cluster of cities (estimated population of 769,200 in 1976) com-

prises the largest industrial market in the Atlantic southern lowlands after Atlanta. Significantly, Charlotte is about 415 highway kilometers (260 miles) from Atlanta and Greensboro is about 530 highway kilometers (330 miles) from Washington, so the Charlotte-Greensboro axis lies halfway between two dominant urban "poles" in the region. Growth has been great enough in the greater metropolitan area of Charlotte, spilling into adjacent South Carolina counties, that local geographers have been calling the entire metropolitan region "Metrolina" to indicate its dispersed urban character and two-state location.

In spite of the growth of these cities, and numerous others located in a more dispersed pattern across the coastal plain portion of the region, there is a sizable rural and small-town population that resides many miles from the primary growth centers. This population contains numerous families that continue in economic circumstances little changed from those of two or three generations earlier. Rural industrialization has affected the earning power of some.

FIGURE 9-4

THE PIEDMONT URBAN CRESCENT. The small and medium-size cities in this arc on the North and South Carolina Piedmont have begun to merge their urban territories though the same process of sprawl and coalescence that have occurred on a much larger scale in Megalopolis.



JA-169

Exhibit 195

[Letterhead of U.S. Department of Justice, Civil Rights Division,
Office of the Attorney General, Washington, D.C. 20035]

7 DEC 1981

Mr. Alex K. Brock
Executive Secretary-Director
State Board of Elections
Suite 801 Raleigh Building
5 West Hargett Street
Raleigh, North Carolina 27601

Dear Mr. Brock:

This is in reference to Chapter 894 (S.B. No. 87, 1981) and Chapter 821 (S.B. No. 313, 1981), providing for the reapportionment of United States Congressional districts and for the reapportionment of the North Carolina Senate. Your submission, pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, was initially received on July 16, 1981, and was supplemented with requested additional information on October 6, 1981.

Under Section 5, the State bears the burden of proving the absence of both discriminatory purpose and effect in proposed redistricting plans. *City of Rome v. United States*, 446 U.S. 156, 183 n.18 (1980); *Beer v. United States*, 425 U.S. 130, 140-41 (1976). In order to show the absence of a racially discriminatory effect, the State of North Carolina must demonstrate, at a minimum, that the proposed redistricting plans will not lead to "a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer v. United States*, *supra*, 425 U.S. at 141. While the State is under no obligation to maximize minority voting strength, the State must demonstrate that the plan "fairly reflects the strength of [minority] voting power as it exists." *Mississippi v. United States*, 490 F. Supp. 569, 581 (D.D.C. 1979), citing *Beer v. United States*,

supra, 425 U.S. at 139 n.11 and 141; and *City of Richmond v. United States*, 422 U.S. 358, 362 (1975).

We have given careful consideration to all of the forwarded materials, as well as past legislative reapportionment plans, comments from interested citizens, and other information available to us. With regard to the Senate plan, we note at the outset that the proposed redistricting plan was developed by the North Carolina Legislature pursuant to a 1968 amendment to the North Carolina Constitution which provides that no county shall be divided in the formation of a Senate or Representative district. As you know, on November 30, 1981, the Attorney General interposed an objection to that amendment under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, because "[o]ur analysis show[ed] that the prohibition against dividing the 40 covered counties in the formation of Senate and House districts predictably requires, and has led to the use of, large multi-member districts." Our review of the 1968 amendment also showed "that the use of such multi-member districts necessarily submerges cognizable minority population concentrations into large white electorates." Accordingly, we have reviewed the Senate plan not only to determine whether the proposed plan would lead to a "retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise," *Beer, supra* 425 U.S. at 141, but also to see whether it fairly reflects minority voting strength as it exists today. *State of Mississippi v. United States*, 490 F. Supp. 569 (D.D.C. 1979).

Our analysis of the Senate plan shows that in several counties covered by the Voting Rights Act's special provisions, such as in Guilford, Wilson, Nash, Bertie, Edgecomb and Martin, there are cognizable concentrations of minority persons whose political strength is diluted as a result of the use of multi-member districts in the proposed redistricting plan. In Guilford, for example,

the State has proposed the creation of a three-member district with a black population percentage of only 25 percent. Yet, under a fairly-drawn system of single-member districts in that area, one such district likely would be majority black and, therefore, would better recognize the potential of blacks to elect representation of their choice.

Likewise, in Wilson, Nash, Edgecomb, Martin and several of the counties in proposed District 1 which are covered jurisdictions, the State proposes to create multi-member districts in which black voters seem to have no opportunity to elect candidates of their choice. Here again, fairly-drawn single-member districts would likely result in Senate districts that would not, as the proposed Senate plan does, minimize the voting potential of black voters in those covered counties.

Understandably, these effects of the proposed Senate reapportionment plan well may have been the result of the State's adherence to the 1968 constitutional amendment which, as we have already found, necessarily requires a submerging of sizeable black communities into large multi-member districts. In view of the concerns discussed above, however, I am unable to conclude, as I must under the Voting Rights Act, that the proposed Senate redistricting plan is free of a racially discriminatory purpose or effect. Accordingly, on behalf of the Attorney General, I must interpose an objection to the Senate plan under Section 5 of the Voting Rights Act of 1965 as it relates to the covered counties.

With respect to the Congressional redistricting, we have also completed review of that submission. During the course of our review, we were presented with allegations that the decision to exclude Durham County from Congressional District No. 2 had the effect of minimizing minority voting strength and in addition was motivated by racial considerations, i.e., the desire to preclude from that district the voting influence of the

politically-active black community in Durham. On the basis of the information that has been made available to us, we main unable to conclude that the State's decision to draw District No. 2 was wholly free from discriminatory purpose and effect. In this connection we find particularly troublesome the "strangely irregular" shape of Congressional District No. 2 (see *Gomillion v. Lightfoot*, 364 U.S. 339, 341 (1960)), which appears designed to exclude Durham County from that district contrary to the House Congressional Redistricting Committee's recommendation.

We note also that, over the past several redistrictings, the black population percentage in District 2 has been decreased. Prior to the State's 1971 redistricting District No. 2 was approximately 43 percent black. Under the 1971 reapportionment plan, District 2 decreased to 40.2 percent black population. The 1981 submitted plan would reduce further the black population in the district to 36.7 percent. This reduction in black population percentage, occurring despite a statewide increase in the black population, is especially crucial in District 2, because it occurs in the only district where black voters could have the potential for electing a candidate of their choice.

We recognize that the State may want to respond further to the claims that a racially discriminatory purpose and effect were involved in the Legislature's decision to circumvent Durham. However, because of the time constraints imposed on the Attorney General by Section 5, and the unanswered questions still remaining, I cannot conclude that the burden imposed on the State by Section 5 has been sustained. Accordingly, I must interpose an objection also to the Congressional redistricting insofar as it affects the covered counties. However, should the state desire to present to us information relating to the configuration of District 2 which would address the allegations mentioned above, we

stand ready to reconsider this determination as provided in the Section 5 guidelines.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the Congressional redistricting plan has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. However, until the objection is withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the Congressional redistricting plan legally unenforceable in the covered counties.

If you have any questions concerning this matter, please feel free to call Carl W. Gabel (202/724-7439), Director of the Section 5 Unit of the Voting Section. As always, we stand ready to assist you in any way possible in your reapportionment effort.

Sincerely,

/s/ Wm. Bradford Reynolds
Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Exhibit 199

[Letter from Republican Congressmen Coble and McMillan
to John R. Dunne, Assistant Attorney General,
United States Department of Justice]

June 13, 1991

The Honorable John R. Dunne
Assistant Attorney General
Civil Rights Division
U.S. Justice Department
Washington, D.C. 20530

Dear Mr. Dunne:

We are writing to request that the voting rights section of the Justice Department investigate the current redistricting process for congressional redistricting in North Carolina. Recently the House of Representatives in North Carolina Committee on Redistricting passed a plan for congressional redistricting which will be the subject of public hearings. The plan as proposed has several major flaws, among them gross partisan gerrymanders for the sole purpose of incumbency protection of the majority party candidates.

Specifically, with regard to voting rights enforcement, the counties of Bladen, Robeson, Scotland, Cumberland, Hoke, Harnett, Lee, Anson and Union are covered jurisdictions under Section 5 of the Voting Rights Act. Since the 1980 Census, it has been apparent that these counties contain concentrations of minority populations in significant numbers which are politically cohesive. In the 1980 Redistricting, this concentration was divided among three Congressional Districts, the 8th, 7th and 3rd. This configuration had the effect of fracturing this group of voters. The proposed North Carolina congressional plan that is being considered by the House continues this fracturing of these minority voters into three congressional districts. The effect of this plan, if enacted, vio-

lates federal law and the stated criteria for drafting redistricting proposals.

Secondly, the proposed district in the Northeast, which is also covered under Section 5 of the Voting Rights Act lacks the requisite concentration of voting population to insure that the minority population has a reasonable chance for electing a candidate of their choice.

We are writing to you at this stage in the redistricting process to request your assistance in preventing at an early stage the violation of federal law. We urge you to closely examine the fracturing of voters in the Southeast and the failure to create districts of sufficient minority concentration in the Northeast areas of our state. In addition we ask that you bring appropriate legal action as soon as possible to prevent the 1992 elections from proceeding under any plan which violates federal law.

We are by copy of this letter to the state redistricting committees making our comments known to them in hopes of alerting the members of the committee that the adoption of this plan as proposed does not conform to federal law and to go back to the drawing boards.

Sincerely,

/s/ Howard Coble
HOWARD COBLE
Member of Congress

/s/ Alex McMillan
J. ALEX MCMILLAN
Member of Congress

CASS BALLENGER
Member of Congress

CHARLES TAYLOR
Member of Congress

Exhibit 200

NOTICE OF PUBLIC HEARING

The State House Committees on Redistricting are holding a series of public hearings on legislative and congressional redistricting.

The hearings are separate and in addition to the public hearings that have been held by the State Senate Redistricting Committee.

The hearings will be held at the following times and places:

- * Jacksonville 21 MARCH 7:00 p.m.
Courtroom
Old Onslow County Courthouse
Jacksonville, N.C.
Contact: Rep. Bruce Ethridge,
Rep. Charles Albertson
- * Rocky Mount 26 MARCH 7:00 p.m.
Council Chambers
City Hall
Rocky Mount, N.C.
Contacts: Rep. Thomas C. Hardaway,
Rep. Howard Hunter
- * Winston-Salem 26 MARCH 7:00 p.m.
Board of Aldermen's Room
City Hall
Winston-Salem, N.C.
Contact: Rep. Annie B. Kennedy,
Rep. Warren Oldham
- * Fayetteville 27 MARCH 7:00 p.m.
Room 119
New Cumberland County Courthouse
Dick Street
Fayetteville, N.C.
Contact: Rep. Nick Jeralds,
Rep. Alex Warner

JA-177

- Chapel Hill 4 APRIL 7:00 p.m.
Courtroom
Franklin Street Post Office
Chapel Hill, N.C.
Contacts: Rep. Joe Hackney,
Rep. Anne Barnes
- Williamston 4 APRIL 7:00 p.m.
Courtroom
Martin County Governmental Center
Williamston, N.C.
Contact: Rep. R. Eugene Rogers,
Rep. Walter B. Jones, Jr.
- Statesville 5 April 6:00 p.m.
Old Iredell County Courthouse
Statesville, N.C.
Contact: Rep. C. Robert Brawley,
Rep. Doris Huffman
- Gastonia 5 APRIL 7:00 p.m.
Health Sciences Auditorium
Gaston College
Gastonia, N.C.
Contact: Rep. John McLaughlin,
Rep. Clayton Loflin
- Asheville 6 APRIL 9:00 a.m.
5th Floor Courtroom
Buncombe County Courthouse
Asheville, N.C.
Contacts: Reps. N.J. Crawford,
Martin Nesbitt

The purpose of each hearing will be to give the citizens of the State as well as interested groups an opportunity to express their views on legislative and congressional redistricting, and to give the members of the Committees the opportunity to learn from such public input.

The 1991 North Carolina General Assembly is required by law to redraw the districts from which the following are elected:

- * all the members of the State House of Representatives,
- * all the members of the State Senate, and
- * North Carolina's members of the United States House of Representatives.

The redistricting must be based on the 1990 U.S. Census. If the General Assembly finds that the State House, State Senate, or U.S. House districts contain certain inequalities that are legally impermissible, then it must shift the population of the districts to adjust the inequalities.

Two State House committees have been created: the Committee on Congressional Redistricting and the Committee on Legislative and Local Redistricting; they will both make recommendations to the full House of Representatives. Both committees share the same three Co-Chairs, Representatives Edward C. Bowen, Milton F. Fitch Jr., and R. Samuel Hunt III.

The Committees invite any citizen or group to express any views that are relevant to the Committee's purpose. Of particular interest to the Committees are the public's ideas concerning:

- * the criteria that the General Assembly should use in drawing legislative and congressional redistricting plans.
- * the ethnic, geographic, economic, or other communities of interest that may exist within certain legislative or congressional districts that should bear on the General Assembly's consideration.
- * the redrawing of particular legislative or congressional districts or of the entire State. Specific written proposals are welcome.

The Committees encourage anyone making a presentation at the hearing to submit a written statement to the Committees and to make a brief oral summary of that statement at the hearing.

Later in the process of redistricting, after redistricting plans have been proposed but not enacted, an additional public hearing will be held to receive public comment on those plans.

Anyone who has questions about the hearings should write or call one of the Co-Chairs of the House Committee on Redistricting:

- Representative Edward C. Bowen
1217 State Legislative Building
Raleigh NC 27603-5925
(919)733-5757
- Representative Milton F. Fitch Jr.
1202 State Legislative Building
Raleigh NC 27603-5925
(919)733-5808
- Representative R. Samuel Hunt III
1323 State Legislative Building
Raleigh NC 27603-5925
(919)733-5775

JA-180

SENATE REDISTRICTING PUBLIC HEARING

Asheville, N.C.

March 15, 1991

* * * *

[4] VOLK: I'm, Barbara Volk of Reedy Creek. I appreciate the chance to present to the committee one of our concerns is that when the committee looks at redistricting they try to keep areas of similar interests and similar types of communities together rather than trying to put together areas that have great disparity of concerns as to population types. And, we—necessary to do this I personally support breaking [5] up counties if necessary. I know that counties are very strong in North Carolina but if necessary to get proper proportions I would support taking off certain precincts into making a district.

* * * *

JA-181

PUBLIC HEARING

Wilson, N.C.

March 18, 1991

. . . .

[2] Reverend Thomas Walker,
Edgecombe County Commissioner.

Reverend Walker addressed the issue of Black representation in the General Assembly. Although 22 percent of the State's population is Black, only 12 percent of the House and 10 percent of the Senate are Black. He urges the committee "to remedy this inequity" creating "some single-member districts that will afford the opportunity for us to elect at least 25 Blacks to the State House and at least 10 Blacks to the State Senate." These districts would need to have at least 65 percent Black population.

In his comments regarding Congressional Redistricting, Rev. Walker stated, "To reach parity, the Black community would be entitled to two and one-half seats in the U.S. Congress I ask you to draw at least two majority Black Congressional districts—one rural and one urban."

. . . .

**INFORMATION ON STATE LEGISLATIVE REDISTRICTING
THIRD DISTRICT BLACK LEADERSHIP CAUCUS**

March 21, 1991

* * * *

Jerome Shipman: V. We recommend that the 12th congressional district be established in the northeast with a rural commonality. Further, we recommend that every possible consideration be given to establishing an urban *majority*-minority congressional district and a rural *majority*-minority congressional district (referenced above): two *majority*-minority congressional districts.

* * * *

ROCKY MOUNT PUBLIC HEARING

March 26, 1991

. . . .

[7] Rev. Locks: Good evening Mr. Chairman, and to the members of the state legislature. I see both the House and Senate here represented tonight, and we are glad to have the opportunity to say a few words of encouragement to you, in the midst of what must be a very trying experience. I, like others certainly want to express appreciation for your taking time out of your very busy schedule to get input from the public sector on the matter of redistricting. I am Reverend Sidney A. Locks, pastor of Cornerstone Missionary Baptist Church in Greenville and served for four terms recently in the House of Representatives. I too express a sincere hope to keep and to make a great state even greater. I am here representing Pitt County in many ways. One, as the Political Action Chairperson of the Greenville/Pitt County Black Ministerial Alliance. I serve on the Political Action Committee of the General Baptist State Convention, I am a member of the Executive Committee of the Pitt/Greenville Chamber of Commerce, and I have come tonight to share some concerns that many North Carolinians have relative to the congressional redistricting that must be done. Mr. Chairman we hope that you fair well in that experience.

Locks: Almost a full century now, no African-American has had the opportunity to share in the U.S. Congress as you by now well know. It is our belief that there are many extremely qualified African-Americans in the great state of North Carolina that are more than qualified to serve all of the people of this state. We encourage you as you do your work that you will provide ample opportunity for as many as possible to do so. We recognize there will be at least three persons in terms of the number of African-American North Carolinians, and certainly we want to request that you look for those, but

at least hopefully two districts be drawn wherein African-American North Carolinians have an opportunity to serve.

Locks: It is my considered opinion that we have been structured out of the congressional opportunity of serving North Carolina. By structured out I mean that by virtue [of] the very system itself, [8] does not lend toward opening up the opportunities for minorities. For example, until only recently, (and of the group of persons that began serving, I think Senator Ballance is indeed one of those in the Legislature) in '83, that we really began since the last redistricting to see an increasing number of minorities. Not nearly as many as would be fair or the number that should be, but indeed a great increase over what it was over a decade ago. And certainly Mr. Chairman, we do want to make it part of the record that this important body of the General Assembly made that possible. But even since then, by virtue of fact, that the Legislature made certain that minorities, African-Americans, had the opportunities to be elected by sitting down and taking pains to make sure that there were districts where that was possible.

Locks: We are not saying that we need a ninety-percent district or an eighty-percent district, or seventy-percent district. We just want the opportunity to be elected and we believe that that is possible. We encourage you to look very closely at the weight of the historical way that redistricting has been done, because we believe that it historically has also kept African-Americans out. By historically I mean for example the way that the incumbency, the importance of incumbency on redistricting. We recognize that you would not have much ?????? [sic] if you did not protect at least your own district and yourself. But if there are opportunities where incumbency does not have any weight, encourage particularly, and there is rumor that there may be in the east the possibility of there not being incumbency as it

relates to a congressional district. We certainly want you to take that area as a priority.

Rev. Locks: Also as it relates to the House and Senate, we again appeal that you would look for opportunities for more minorities to be elected. More women to be elected and we believe that there are some additional opportunities. We don't come and ask that you change the whole state to single member districts. We recognize that the population is so diverse in the state that what we would prefer you to do is to be creative and be intentional in what you do. But most of all be fair. And we believe that that would indeed be done. Most of all we have confidence in the system, and believe that when the dust settles and the smoke clears, that you the members of both Houses, and especially members of the House of Representatives, pardon me for saying, but that's where my heart truly is, will do the best job. We hope at some future time to share with you from the public sector some suggested plans and opportunities. We commend you in the work that you are doing and encourage that you would consider these situations.

Fitch: Thank you Rep. Locks. Vivian Tillman, Edgecombe County Democratic Chairman.

Vivian Tillman: Thank you Rep. Fitch, and to the other members of the state legislature. I am Vivian Tillman and I represent [9] Edgecombe County Democratic Party as the chair. As we think about redistricting there are numerous ways that this can be done. There is the fair representation wherein you involve black, white and other minorities, and there is the white domination way, and there is the Black domination. So as you study and plan to redistrict or redraw the lines for the House, I ask that you consider the following: Number 1, consider geographic areas, keep the counties and the precincts together. That is the state voting district. We would ask that you would not divide precincts and not divide counties if possible. The second thing, consider major

racial groups with the lines drawn to reflect population change, public interest groups, that will meet the legal guidelines and draw lines so that we will have representation from all groups.

Tillman: As you have determined the boundaries of the congressional district, we would like for you to consider combining largely populated, industrialized urban counties together. Consider combining rural and agricultural counties in a district, and avoid combining a large population with a total of 35% of the votes in the district, with 10 smaller populated counties with the remaining 65 as we have here in the second congressional district. We thank you for listening and hope you will consider these suggestions.

* * * *

CONGRESSIONAL REDISTRICTING PUBLIC HEARING

April 6, 1991

* * * *

[23] Keith Holtsclaw: The physical geography of the mountains literally separates us from the Piedmont in fact a lack of interest when compared to the Piedmont increased importance of tourism in the mountains that completely gives us a completely different set of priorities than the Piedmont.

Given these facts, its only common sense that our Congressman will be better able to represent a homogeneous district. The mountains are so unique and do not need to be piecemeal in other districts where they would be and more importantly competing with priorities that's [sic] more industrialized Piedmont. This size of this could well give the mountain counties compared to more industrialized counties.

In summary, I would like to say the similarities, problems, counties in Western North Carolina in the 11th Districts have a high degree of chronology. They're much better serving the Congress by the Congressman focusing on specifics than a wide range of diverse needs.

Breaking up the makeup of the mountain counties in the 11th District [would] be totally counter productive and reduce the effectiveness of representation in Congress if not

Thank you very much.

* * * *

CONGRESSIONAL REDISTRICTING PUBLIC HEARING

June 13, 1991

* * * *

[40] Betsy McCrodden: Four, respect for communities of interest. Districts should also reflect some community of interest. Common interest defined by social, ethnic, or racial and economic considerations should be considered in the same way that political jurisdictions are.

Fifth, compact, contiguous territories. Convenient, contiguous territories should be grouped together. Districts with irregular outcroppings and indentations, which are found in most of the proposals so far, appear to be designed to incorporate similar divisions not historically or geographically related.

Sixth, respect for geographic boundaries. Natural [41] geographic boundaries such as bodies of water or distinct geographic regions should be followed where possible. Bridges, ferries, and common interests, however, may override this consideration in favor of others that create community things like common media markets, transportation facilities linking a suburb and a central city, similar living standards.

Seventh, encouragement of dialogue. Districts should encourage, not stifle, competition between both parties and candidates. Competition promotes dialogue on public issues, encourages informed voting, and holds elected officials accountable for their actions. Protecting incumbents of either party should not have a high priority in the consideration of new district boundaries.

* * * *

PUBLIC HEARING ON CONGRESSIONAL PLAN

January 8, 1992

* * * *

[16] Robert Hunter: I think that it is important that you treat all urban areas alike, and that you place minority concentrations in all the urban areas in a similar district, so that urban blacks in Raleigh, Durham, Greensboro, Winston-Salem, and Charlotte are all treated in a similar fashion, and that you not try to treat interest groups in two different ways.

* * * *

[18] Scott Kimbrough: A quick analysis, however, reveals three arguments that I hope will allow you to support my plan.

First, two black majority districts, Districts 2 and 7, are created. Both consist of greater than 51 percent black registered voters.

Also, in vast contrast to the plan ratified by the General Assembly, these districts include the largest urban black communities in the state; namely Charlotte, Greensboro-High Point, Raleigh, Fayetteville, Durham, Winston-Salem, Greenville, and Goldsboro. The plan rejected by the U.S. Department of Justice included only Durham and Goldsboro.

Typically the urban communities are better politically organized and are therefore more valuable to the black districts.

Second, this plan establishes districts of regional identity, like the Triad, the Triangle, Metro Charlotte, and a district completely containing our two estuaries, the Albemarle and Pamlico Sounds.

[19] The plan accomplishes this while splitting only 22 counties statewide. You may recall that the ratified plans split 34 counties.

Third, this plan enhances the political power of the small, rural counties by removing the large metropolitan areas from their districts, and an overwhelming influence in the electoral process with them. This allows a better distribution of political power throughout the state.

* * * *

[32] Theaoseus Clayton, Jr.: I support the second minority district concept, but not at any price.

The great challenge is where, and how, the district lines will be drawn to create a second minority district. The population warrants a second district, but should we have two weak unelectable minority districts on paper resulting in no increase in minority elected participation?

Like other interested parties, incumbent congressmen, and potential candidates, I prefer a plan that provides for homogeneity, if compact, and leaves more [. . .]

* * * *

[34] The I-85 Virginia line minority district may have some merit, should — and should be considered but not as it is currently drawn, carving up the 1st Congressional District. This is not acceptable. Why butcher one minority district to create a second one, when in fact sufficient populations exist within the state without decimating the 1st Congressional District?

Where is the homogeneity — in Granville, Vance, Warren, or Northampton, with Charlotte, Winston-Salem, or Greensboro voters? Persons living in Warren, Vance and Granville shop, attend coastal affairs and sporting events in Durham, and use the commercial — There should be some rational basis for the district lines.

* * * *

**SENATE SUBCOMMITTEE ON
CONGRESSIONAL REDISTRICTING**

January 22, 1992

* * *

[16] DAUGHTRY: Second questions is. The question is the fact that a number of people blame the Justice Department for the fact [17] that we are here and for the fact that we have not followed the laws related to the Voting Rights Act. It is true isn't it that the Justice Department never drew any of these districts. We just sent proposals and we have——

WINNER: Well, that's what they said. but I don't believe that. Not only did I think that we did not violate the Voting Rights Act. But I think we went, my personal view is and has always been that we went farther than the Voting Rights Act required the first time. The Voting Rights Act which obviously has to do a lot with how — with removing impediments for people voting. But that's not what we're talking about here.

The Voting Rights Act with regards to how districts are formed, as best I can tell from taking [sic] to people who voted for it, and was never intended to say that you have to take little Black, or minority concentrations that are disparate and put them together when you can make a district. Like the Bush Administration is forcing us to do. What it says is — what it says is that you cannot submerge Black concentrates that are big enough to have a majority, by using mechanisms like multi-member districts when you have a majority of Blacks to overwhelm them or by fragmenting them. Now, there is no place in the State of North Carolina — zero place that there is enough concentration of Blacks that you can form a reasonable compact Black district without going and getting disparate Black areas, but — And that's why I think the only reasonable plan that I've ever seen during this whole exercise and it wasn't complete was one that I sketched out before it was on the computer, and before

we started talking about this in which we ended up with twelve reasonable compact districts, and there were no minority districts in it.

I become convinced early on in this that is was arguable, at least, that there was enough Black concentration in the northeast part of the state that you might have to do this. And, that's why I tried to lead us into passing what we passed. Not because I don't think it did, but because at least it was reasonable to argue that. But it is totally unreasonable and not within the intent of the Voting Rights Act, to stay [sic] that you have got to go pick up a piece of the Black community in Wilmington and combine it with a little piece in Columbus County and a little piece in Robeson County and the Lumbee Indians and a little piece in Union County and the Blacks in Charlotte to make a district. Or, that you have to combine a little piece in Gastonia with [a] little piece in Charlotte and like a string of pearls up I-85. I think it is an absolute intentional distortion of the law, and I think it was done for one purpose and one purpose only and that was to protect Republican Congressman. And it did that.

I mean, there is not doubt that Howard Coble's district which was shaky under the prior plan, is now safe; that Congressman McMillan's district which wasn't really shaky, [18] but is now safer. And, that Congressman Neal's district under this plan, which was not safe, but is much less safe, and that the eighth [sic] district is less safe. So I think it accomplished what the Justice Department wanted it too [sic], which was to protect Republican congressmen. Didn't protect them all, and so we're going to hear some more of this, I'm sure. But I—

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[21] WINNER: As a matter of fact, I [sic] will work. Senator Walker drew a plan that has about the same net effect on Congressmen, using that district as this one. It will work. But the problem, but it's worse than this for

two reasons — three reasons. First of all, it's worse than this because it is less compact, even though [sic] the 85 district obviously is extremely narrow it's 170 miles long, not 250 miles long. It has a corridor that's easy to travel, not ah, not—

ODOM: Not during construction[.] (laughter)

WINNER: - - - it' [sic] only two and a half hours driving time from one end to the other, the other had four hours driving time from one end to the other. So, it is more compact.

Number two: there is clearly more of a community of interest. I mean you are combining urban people essentially — up and down, all the way from up in Gastonia to Durham, so it does have that advantage.

Number three: It is solely a Piedmont district and you have that community of interest rather than trying to combine the rural east with the Piedmont.

And, Number Four: it only — well I'd hate to run in any of those districts — it's only in three mass media areas, instead of five mass media areas, which the Charlotte to Wilmington district has to go through. So, those are the advantages.

DAUGHTRY: Dennis, if you can convince this body that that is a compact district, then you ought to get into real estate.

WINNER: No, Sir, it is not — it is not compact, Senator Daughtry. I never did. It's a terrible district. But it's more compact than a Charlotte to Wilmington district.

BALLANCE: Mr. Chairman, Senator Winner. These plans — this plan has two quote, unquote minority districts — 57 point plus percent Black, is that right?

WINNER: You mean population. That is correct.

BALLANCE: Have you seen any other plan that would do as well to create two Black districts.

WINNER: I have seen no other plan that would do — that would create any more bigger concentration of minorities than this.

[22] BALLANCE: Let me make this point, Mr. Chairman, then I'm quitting.

Now, a little earlier I believe the Senator said something about the Civil Rights Act, that was the wrong act. I think he was referring to the Voting Rights Act. None the less, now let's be honest about this. You cannot blame the Voting Rights Act which was designed, as Senator Winner said, to create an opportunity where there was none. So if you want to blame something, I'm not going to use the term *racism*, but let's use the term *insensitivity*. We all know that the reason this whole act came about was because Blacks were not able to get elected. So, let's don't blame the remedy, let's blame the problem. And, now we are trying to create an opportunity where Blacks can get elected. And, I can say this as a person who has been elected in a district created where Blacks can get elected. The white voters change their opinion once they have an opportunity to communicate and to see what Black citizens can do if they are given an opportunity. And, many Black[s] who are elected in minority districts as was pointed out in Senator Richardson's district, don't need as heavy a concentration the second and third time around because white voters support them.

And, I heard — I read where Harvey Gantt said just yesterday that he didn't want to run in a Black district, that he wants to build a coalition of Black and White voters. And, I think that's really the way we all want to go in the future. But I don't think we ought to go around and blame the remedy for the problem. And I just wanted to make that on the record.

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JA-195

NORTH CAROLINA GENERAL ASSEMBLY
SENATE
1991 EXTRA SESSION

THE DAILY PROCEEDINGS IN THE SENATE CHAMBER

Lieutenant Governor James C. Gardner, Presiding

Thursday, January 23, 1992

* * * *

[3] Senator Kincaid: Senator, again, I have not been a member of the Committee and you have been to a lot of hearings and I haven't but—and I haven't read a lot from Justice that probably you have, but has Justice stated that they have to be—the minority have to be assured of winning in these districts?

Senator Winner: No, sorry, they don't say that they have to be assured of winning, they have to be assured of making the choice. In other words, that it's the minorities['] choice. They can vote for a white person if they want to. But they have to have control of the district. And it's not just Justice that says that. There's just an abundance of judicial case law that says that—all the way up to the Jingles [sic] Decision—it just doesn't comply—wish that it did because I think, I think what we're being forced to put on North Carolina is terrible. You're gonna hear me say it again when I talk about the plan. And, I just don't see any way around it. I mean you can have different terrible plans, but one way or the other if your [sic] gonna do this. And I don't think that was a terrible plan and, but there is just no way it's gonna get by.

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DAILY PROCEEDINGS IN THE SENATE CHAMBER

Friday, January 24, 1992

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[2] Lt. Governor: Senator Winner.

Senator Winner: Mr. President, ladies and gentlemen of the Senate. I'm going — I hope — I'm going to ask you to be patient with me, 'cause I've got some things I want to get out—off my chest about this bill.

The bill before you is the bill that the House passed last night creating twelve Congressional Districts in the State of North Carolina. Because it had not been assigned to the Redistricting Committee, we had a meeting this morning and agreed that if that bill — that we would take that bill up anyway and that if it passed the Committee that it—we would ask that it be sent directly to the floor rather than have a redundant meeting. Or, if there were changes, then we would have gone back to Committee but the Committee did, by a large margin, pass the bill.

I'm going to make some remarks that some of—some black people who do not know me and some white people might be — might be perceived — they oughtn't be — but might be perceived as racist. And because I am not a racist I wanted to just for a minute talk a little bit about my background.

I grew up in the segregationist South as most of you did. But it was something that my parents taught me and my brother and sister was wrong from the very beginning. My father, there are many instances I could cite to you, but he went out on the limb not to do radical things but to move race relations ahead many times. Had—I mean, he was berated at home, had threatening phone calls from some of the things he did. For instance, one of the things he did was to em—to put on the sales floor of our store the first black sales lady in the City of Asheville in the late fifties. My sister, Leslie,

who most of you all know, and I were reminiscing about this two nights ago and she told me a story about how, when she was just a little thing, just four or five years old. She was up on Pack Square and asked my mother why there were separate water fountains for colored people, as they said on the fountain, and white people. And my mother's response was, "it's wrong." We were always taught that it was wrong to treat people differently because of the color of their skin, it is something that I have believed my whole life.

Now let me get to this bill. I talked about those things because I am an angry Senator. I have been before you, I can remember on one occasion, and probably others, when because of circumstances it was necessary for me to try to lead you into something that I, personally, perceived as bad for North Carolina. Cutting—taxing State employees [sic] retirees is the one that I remember that I thought was bad — but that we just had to do it.

This bill, I think, is not only bad, I think it is terrible for North Carolina. I think it is bad for Democrats and Republicans, for whites and blacks, and all of us. And, I am angry that we're in the position and I have been asked—or put in the position where I have to lead the charge to ask you to vote for something that I think is terrible. I think it is contorted. And I think it artistically looks bad, although that doesn't bother me as much as it does editorial writers. I think the districts are not as compact as they should be. I think that the Bush administration has, for reasons I which I will — will put reason on them later in this talk, has forced us to do things that the Voting Rights Act does not require and which are bad for the State but from which, on talking to the expert lawyers in the field, we have no practical remedy.

So, therefore, we get to a choice of making choices between bad options. And this is a bad option but it is not as bad as some of the options that I have seen.

My mother, who has been a liberal Democrat all her life, before I came down here took one look at the plan which had been sent out which is essentially the same with some changes and compromises in it and said, "it looks like we're going back to segregation again." It looks like—and this is the first time not in the News and Observer's editorial that I had heard this phrase used in connection with this, that what the Justice Department has required is that we go back to "separate-but-equal." And I—that goes against every grain in my body as to what society ought to be heading for. Now, I realize that this bill, in all probability—it certainly will give the black people in two districts the choice of a Congressman. And I presume that in the next election or some election they will elect black Congressmen and I have no objection if there are twelve black Congressmen from this State, but I think those who think [3] that is a gain for the black people of this State to have segregated districts are being very shortsighted to the goal of having a society in which people are treated for their worth or un-worth and not because of what the color of their skin is.

I am angry at the Bush administration. I am not angry at any Republican in here. This is a partisan Body and no matter how you do it — whether it be by commission as I've talked to people in other states — or how you do it, it ends up to be a partisan process. And I'm not angry at any Republican, 'cause I probably would have done the same to use — or attempt to use the Voting Rights Act to put Democrats together so Republicans can be elected. There's nothing—that's part of what legislation's about.

But the Justice Department ought to be above that. They ought to not distort that law for any purpose. And I'm satisfied that they have done that. And I'm satisfied that they have done it intentionally, and I've never heard any refutation of the rumors in what I'm going to tell you the history of this is. I'm going to tell you what's

rumor and what I know from my own eyes because I think those are distinct and I think the rumors may not be true. But they've not been refuted and I've said them before.

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And, consequently, we enacted a plan that was distorted and we got highly criticized for it. And now I must put forth before you a plan that's even more distorted. And we'll get criticized for it, again. But it is not anything that many of us in here, if any, would want to do if we had a choice. I don't know of anybody in here who does not want to draw compact, regular shaped districts with this less cutting counties in two. The last plan, at least, didn't cut them in three but when you get to putting these districts together you end up—I mean putting two districts you end up with places that you have to cut them in three. And I think that that's bad and I think that everybody in here thinks it bad.

The—but we've been placed in a position that, as I've said, that I think is terrible. We passed a plan with one black district. Even though I, personally, think the law didn't require that the way our geography is. But it, at least, was arguable. If you look at the map of where black-majority precincts are, you find little pockets of them all over the State, but a massive area in the northeast where there are many of them.

And we sent it to Justice and there was some concern among many of us that the House and the Senate Plan may come back for reasons—particularly the House Plan that Senator Shaw elaborated at the time. But no one, that I know of, even conceived that the Congressional Plan was coming [4] back. There was no way to draw a second black-district that didn't, first of all, look like an absurdity and secondly, besides the looks of it it required picking a little pocket of blacks here and going down the road or through a field or by a telephone line, or what

river and picking up another little pocket of black people and taking the blacks out of one community and tying them together with the blacks of another.

And there is nothing in the Voting Rights Act, in my opinion and in most of the people that I've talked to who understand the Act, that requires that. Nothing. What the Voting Rights Act says is when you have a big enough concentration of blacks, or any minority, to form a majority that you may not deprive that group of a majority by fracturing them into different districts or by submerging them into multi-member districts. It doesn't refer in any way to going and making a string of islands together to form a district.

So no one took, really, even though David Balmer had drawn three different plans that had second black districts all of them did what I've just said and nobody took that that there was a serious possibility that the Justice Department was going to turn it down.

Now. Rumor has it, and it's been publicly rumored and I've heard no refutation of it that shortly after we enacted that plan that the four Republican Congressmen from North Carolina had a conference with John Dunne asking him to require is [sic] to put in a second black Congressional district. I believe that is true. It may not be, but I believe it to be true.

* * * *

And, then about a week or ten days maybe before December 18 we started hearing rumors that they had—that they were going to force us to adopt the Balmer district that ran from Wilmington to Charlotte. Even though, I think we had given them fairly good evidence that in primaries—and that's a very Democratic area of the State—but in primaries the Lumbees and blacks, historically, had not voted together and, therefore, it really wasn't a district of minority control even though together there were more minorities than whites.

I still didn't believe it. About a few days before the 18th, I got a call from Mr. Cohen, or my sister—I can't even remember which, who said that the Justice Department has requested that we go up there and talk to them again. And we did. On December 17th, Mr. Cohen, my sister, and I, Representative Flitch, and the Speaker when to Washington, at the State's expense, and when I got there and sat in the meeting for five minutes—first time I had met Mr. Dunne, and there was much of their staff there—I knew that they had already made up their mind. And I could not figure out why they called us up there and don't understand that to this day.

And Mr. Dunne, some of the staff asked a question or two or said—made an occasional comment, Mr. Dunne did most of the talking. The essence of what he said at that meeting was — and he said this in different ways over, and over, and over again — you have twenty-two percent black people in this State, you must have as close to twenty-two percent black Congressmen, or black Congressional Districts in this State. Quotas. Here is the Bush administration who from the very beginning has been screaming about quotas. When it is to their advantage so they can elect some Republican congressmen, all of a sudden they are for quotas.

And I want to tell you that I was not a great admirer of John East. But when John East was in the United States Senate and the Voting Rights Act was before it, John East, if my memory serves me correctly, on the Senate floor said the day will come that this will lead to in voting districts is quotas. And nobody paid any attention to him but he was dead right. And I'm telling you that it is dead wrong to do that.

[5] It is a deliberate distortion by the Bush administration of the Voting Rights Act because, in my opinion, Representative Coble's district was shaky; because Representative McMillan's district wasn't as safe as they

would like for it to have been although it would have been hard to make it much safer with the size it was without pulling the blacks out; and because we had not made the Democrat district shaky enough. And they accomplished what they wanted to do in this plan. Because Representative McMillan's district is now totally safe, and Representative Coble's district is totally safe, and Representative Hefner's district and Representative Neal's district have been clearly made shakier. But it's wrong, folks. And we are going to get—Democrats in here are going to get the blame for this plan. But we're being forced into it and that's all there is to it.

Now, I want to get off that for a minute and talk a little bit about the political aspects of this plan. In my view, it's going to—you know, it's going to be criticized for gerrymandering. Any plan we passed would have been criticized for gerrymandering. And if the Republicans had a majority, and they passed a plan, we would have been criticizing them for gerrymandering.

But, if you really look at it, and if you take all the incumbents out and pretend that there are no incumbents running because obviously we all know that incumbency has a lot to do with electing Congressmen, what you have is three safe Republican districts and three safe Democratic districts and one district, the Fourth District, that is—if the Democrats has [sic] a decent candidate is a safe district, though, though it has been shown that Wake County which dominates the District will vote Republican as they did for Governor Martin, so you can't say that that's totally safe; but that would certainly be a strongly leaning Democrat district. And the other five districts cannot be characterized any way except swing districts, if you take the incumbents out of them. With the incumbents in them, you would expect incumbents to win them—I would expect incumbents to win them all, unless you've got a landslide of the party, you know the opposite party in the other direction.

In any event, the plan, in my opinion, from a party point of view—though, you know I'm a Democrat and I obviously cared more about protecting my folks than the back row's folks—it is basically fair from a party point of view. It is still bad from a geographical point of view. And I don't think there is a doggone thing we can do about it.

Now, before I sit down — and I have gone past the rule of what I can say—talk in length of time and so I'm going to sit down quickly — I do want to comment about this plan relative to other two-minority-district plans which I have seen.

I think that this plan is better, even though it's bad, is better than the other plans I have seen for the following reasons.

First of all, there are clear minority majorities. In one district, in the Second District it is over fifty-two percent of registration black and in the Twelfth District over fifty-four percent of registration black; both of them substantially exceed the district that we passed the first time which the Justice Department had said was okay. So, if they are at all consistent with that they have to say these two districts are okay.

And, every plan—although some other plans had similar features, every plan did not have those clear majorities and particularly, I would point out Balmer's Wilmington to Charlotte district which had a lower percentage even combined with Lumbees and blacks. And certainly you've got to make the case of historically voting together to make it a minority district.

It is also better, in my opinion, because—even though it's bad—I want you, and never to think that I think this is a good plan, because I think that it's a bad plan, but it is better than the other plans that I have seen because it does not mix the Piedmont with the East. There is some general sense of similar interest even though they are

not, in my opinion, of the same community, but at least, similar interests in both of those districts in that the Twelfth District is clearly an urban district with eighty percent of the people being from cities of 20,000 or more and being only in the Piedmont; and, the eastern district which I think is the [6] worst of the two of them from far as compactness being rural, being the great majority—I've forgotten the number, eighty percent or something like that—under towns, not being in towns of 20,000 or more. So there is, at least, a similarity of interest which I have not seen in any other plan.

The closest one was Representative Justice's [sic] district which went from Charlotte to Raleigh, and through Fayetteville, but it went through a great deal of rural area and, therefore, did not have as much of a community of interest, in my opinion.

It, also, is better because it is more — even though it isn't compact, it is more compact than the other plans were. You know it takes four hours to drive from Charlotte to Wilmington. The plan is thirty or forty miles longer from Charlotte to Raleigh than either of these I-85 plans. And the I-85 plan's a three-hour long district. It's no longer than my current Eleventh District, in fact, it's shorter. I think people are annoyed at that district for compactness because it's narrow—not 'cause of its length. I mean, it's obviously long compared to its width. But that's not the test of compactness. The people are fairly close.

So for those three reasons, that there are clear black majorities, that they don't mix the East and the Piedmont, and because there is some kind of similarity of interest of its people, I believe that this plan is the best of the worst. The best—bad, but not as bad as the others. And, therefore, I have to recommend you to vote for it — even though I think it's bad for North Carolina, because I think was [sic] have no viable alternative. Going to court is not a viable alternative. The lawyers —

I mean, at least what our experts say — the experts we've contacted in Washington say the odds are ten to one against us winning if we go to court, it's no use going and spending several hundred thousand dollars in something you are going to ultimately lose. We need to get this behind us for everybody's sake and so I would urge you to vote for the bill.

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[6] Lt. Governor: If there are no objections, I would just like to make a few comments since I think I bring probably the best perspective on redistricting of any member sitting here today. Senator Winner, there's no doubt in my mind whatsoever that everything that you've said was spoken from the bottom of your heart and was true. But I have a long memory. And I remember what has happened in the past by this Body and the adjoining Body that affected Republicans running in the State of North Carolina.

I think back to 1952 when Congressman Charles Jonas was elected by the people of his District and then a series of changing the districts on a totally partisan, unfair basis went on year after year until finally your Party gave up and realized the people of that area wanted Charles Raper Jonas to join them in the United States Congress.

Then along in 1962, Jim Broyhill came along. Identically the same thing happened again, again, and again. And a fellow by the name of Jim Gardner came along from Nash County—an area that the Democrat Party had always controlled in this State for years. And I ran for Congress in 1964 and got forty-eight percent of the vote. I did not win. And I went up and congratulated Congressman Cooley, at that time, on the fact that he was the better man. But I also made a determination that I would run again in 1966. The General Assembly, led by your Party, came in 1965 and changed the District so

that they thought it would be impossible for a Republican to be elected to represent the Fourth Congressional District. We crossed them up — we being the people. And I was elected in 1966 by a large majority.

[7] I went to Washington to serve in the United States Congress with a very young family at some great personal sacrifice. This same body in a very short time changed the playing field again, took out my home town of Nash County out of the Fourth Congressional District that I had been elected to represent the people and put it into the Second Congressional District with my neighbor L.H. Fountain.

So when I sit here today in 1992 and hear people talking about the Bush administration and fairness, I have a hard time sitting here and that's why I asked for the opportunity to stand up and speak. This issue of redistricting has been a partisan issue used by the Democrat Party for years to their advantage. And now, you're in a bind. You gotta answer to somebody else who is carrying out the mandates of the Democrat-controlled United States Congress who voted for the bill.

I would suggest that if you're unhappy, any of you, with the Justice Department, be it Bush's or anybody else, take 'em to court. Have your day in court, let the courts decide what's fair and what's not fair. I hate to see us waste any money any more than anybody else, but there hadn't been any lack of effort to waste it up until now. We've spent an incredible amount of money to send plans that were rejected and sent back. If you don't trust the Justice Department, then take them to court.

But this problem of redistricting, I can tell you firsthand how unfair it's been. I went through it. I appreciate the opportunity of addressing the Body today. Senator Kincaid.

Senator Kincaid: Thank you, Mr. President, and members of the Senate. I appreciate the opportunity to

talk on this bill. I'm confident the remarks that Senator Winner stated were from his heart. And what I say is going to be from my heart.

And like Senator Winner I think I need to preface my remarks by stating a little about myself. I don't think I've mentioned this on the floor of this Senate before, but back in 1967, when I was a high school teacher, I had the opportunity to teach the first integrated class in Caldwell County. And I saw firsthand how inferior the black schools were at that time. And how we were moving in the right direction with the integrated schools.

So I've seen it. And like Senator Winner stated the remarks I make to you Senators today are not intended, definitely, as a racist. But I'm concerned about what we're attempting to do by this bill. Obviously, I'm a layman. I don't have the legal knowledge of court decisions in the past; the Supreme Court decisions and even the Justice Department itself. I can only see what I read with a little interpretation. And like I mentioned the other day on the floor in a question, I'm still looking at the reply the Justice Department sent to us whereby they state that they don't require any jurisdiction guaranteed minority voters racial ethnic proportional results. Just that they have an equal chance.

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[8] I recall at fairs in Caldwell County and Burke County—Burke County in particular—last three or four elections because Burke has been splintered legislatively; lower part of the County has representatives, upper part has other representatives—and the same thing in Avery County except the congressional candidates are split. But I recall going to fairs and those candidates running for the House or those candidates running for Congress would have to meet that particular voter at the fair and say, "I'm Joe Blow and I'm running for the Senate. Where do you live?" They'd say, "Oh, I live up in this

particular section—.” “I’m sorry, you can’t vote for me.” Then they would go on to the next one. That’s the way you have to campaign under these splintered dele-situlations [sic]. It’s not the best way to do it.

* * * *

Now, the political part. Obviously, there is a political part of the bill. Senator Winner, I don’t see how you say that in the bill—for instance, this is another thing that bothers me because Caldwell County will now be split—you stated that Representative Neal’s position would be weakened. Well let me tell you how it would be weakened. If you look at your map, and look at the Fifth Congressional District, you see Representative Neal’s district starts way over in — looks like Vance County just to the right of Rockingham. Senator Daniel, it’s over pretty close to your territory. Then it runs all the way across the Virginia line, to Tennessee line, and then it drops down into Watauga; and would you believe, by coincidence, it then goes into Caldwell County — my County — and only picks up the Democrat precincts; heavily Democratic precincts. I see what Mr. Cohen was doing. And then it moves on down into Burke County; and in Burke County it also picks up heavily Democratic precincts. It will be tough on Congressman Neal in a primary but there’s no way a Republican can win that district. Number one.

And Number two it disenfranchises my people in Caldwell County because they’re not going to know who their congressman is. We’re split now. There’s no way we’d know who our congressman is. And Senator Winner also stated that — and quite frankly I didn’t like the Balmer program; I think Balmer’s bill was just about as bad as these — I don’t like that approach. Senator Winner stated that in this proposal it’s more compact. You don’t have no three or four-hundred mile territory. I just described the Fifth. And the Fifth contacts eastern, Piedmont, and mountain counties. And if it were

not for Rutherford County, it would—the Fifth Congressional District would be the Virginia line, the Tennessee line, and the South Carolina line. That is not compactness.

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[9] Senator Shaw: Mr. President, I rise, not to speak as the Senate Minority Leader, in fact not even as a Republican. But I would like to pose this to the Body as a staffer the Civil Rights Division of the Justice Department might pose some questions to this Body.

I had a map last week and I passed out several copies of it. And it was a unique map. It showed a black congressional district running almost from Charlotte down past New Hanover to Pender County. And it was an actual black congressional district. And a staffer might ask why has it taken this Body a hundred years to draw another if there was so much interest in helping the minorities. Why?

Why, when the Senate Minority member went to the Co-Chair of the Senate Redistricting Committee and said how many minority districts have you drawn? How many can you draw? And the answer was three. And the question was, is that all? And the answer was, yes. Then, at that time the Senate Minority Leader produced nine computer-drawn and all qualified but one.

And in the House, when you look at Guilford County, with 102,000 blacks, and there was just one House seat drawn for a minority. Over 65,000 blacks were put into three white incumbent districts—their voting power diluted. I'm sure if someone had polled those sixty-five to seventy thousand black people and said you're going to have a Democrat House member here another, which would you rather have—a black member or a white member? What would the answer have been?

I think there are some of the questions that staff at the Justice Department might have asked. And I don't

think those questions are political. I don't think they are Republican versus Democrat. I think they are good, honest questions that they could ask. And I think they are the type questions — not that I heard there, but similar to the ones I heard when I was up there. I, incidentally, paid my own way and so did everyone else on the trip along with the law firm that was hired to go. There was no expense to the State on that.

The answers that I got from staff when I said well what were the reasons that no more could be drawn—that none of the amendments were acted on? And the answer I got from the staffer was well, there weren't really any good ones.

I don't think the Bush administration had anything to do with that. The Bush administration didn't have anything to do with the past hundred years of this Body not having created a black congressional district. The Bush administration did not have anything to do with not having created black Senatorial districts. And the Bush administration, certainly, didn't have anything to do with drawing that one black House district in Guilford County. From the conversation I listened to that day up there, the feeling I had was this, that had Guilford County been treated as it should have been for the minorities living there, and this is just an opinion, but all I heard while I was up there time after time after time, was Guilford County. And I didn't ask for it. I heard it.

Had two black districts been created for the House in Guilford County, in my opinion gentlemen and ladies, both the House and Senate plans would have come back here approved. Now I really, honest to God, believe that would have happened.

The congressional thing I think was doomed before we got there, Senator Winner. Because the young man that one of our Representatives there was talking with, I overheard him say, well I'm writing the answer now. Well, you don't write an answer unless you're going to

turn it down. So, I think that decision had been made before we got there.

Senator Winner: Mr. Preside—

Senator Winner, if I might, I did not interrupt you, sir, while you were speaking. So, I'm trying to be as non-political as possible because you know what's going to happen. The thing is [10] going to go up there and it's either going to pass or it's going to come back. The Republicans are going to look after Republicans in this area and Democrats are going to look after Democrats and we all know that's the way it's supposed to be. But I really think that some of the things I said are some of the reasons the Justice turned this down. And I don't think George Bush probably even knows where Guilford County is — I mean, his wife knows where Guilford County is, she buys furniture there, bless her heart — but I don't really think it was political from that end. Thank you.

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Senator Hunt: Thank you, Mr. President. Ladies and gentlemen of the Senate. Personally, I think it's extremely unfortunate that the tone has been set here for us to debate a redistricting bill based on our partisan politics and who should be blamed for it. Now, you know we are talking about to the question as to whether or not black people are going to be able to participate in the arena where decisions are made that have a major impact upon them. And it seems to me that the debate has swung not directed toward that particular question, but if it takes place who is going to be blamed.

Now let me tell you here. I stand today to speak in support of this bill. I speak in support of it from a personal standpoint of view. But Senator Winner, I also speak in support of it because I know among all of those who support it there is an extremely loyal, perhaps the most loyal group of Democrats in this State who support

this. And they will be happy — and some of us represent them as Democrats — will be happy to take the blame for this particular bill. I don't know whether you were talking about that block of loyal Democrats or not. But, they do not look at it as a bad bill.

They look at it as a bill which should have taken place years and years ago—even during the period of separation but equal. And let me just talk — it's ironic that you would mention separate-but-equal. Because you mentioned it in the presence of a number of us but I can speak to myself as being a product — and then after being a product, a participant in that system referred to as separate-but-equal. And I can deal with it from the educational standpoint of view, from the elementary grades up through the completion of secondary school, where I became a participant.

Let me just talk to you about separate-but-equal a little bit and show you how much there's a similarity in that as it related to our educational process and now as it relates to our political process. Back then, you know — and somebody over in this area referred to the, the degradation suffered by black people because of that, so called, separate-but-equal — and I wonder what the situation would be now had we had genuinely a process that could be referred to as separate-but-equal. But to the contrary, separate—yes, but unequal in reality.

[11] We are talking about books handed down after the black schools placed their orders for new books. Those from the white schools were sent to the black schools, the used ones, and the new orders were sent to the white schools. The desks were the same way. In my situation, we instituted while I was a student a course in black history, back in the 40's. And because of the all-white school board, at that time, an all-white administration — they had us to strike that from our curriculum simply because we were not to learn a great deal about our history. We are talking about separate-but-equal.

And, of course, our educational system was administered as it was then simply because there were not black people in the process to have input and be aware and take care of the interest of black people at that time.

I asked my Congressman, currently, in the Second District, Congressman Tim Valentine — and there were others in the Body who were present when I raised the question of time, and you know the Second District has a large percentage of black people in it — “Congressman Valentine, how many black people do you have on your entire staff—anywhere in this Nation, whether it be in Washington or whether it be back in your North Carolina District?” He said, “None.” I said, “Congressman Valentine, then” —and this was recently— “why is it that you do not have black people from this District which has a large percentage of blacks as your constituents in this District, why do you not have blacks on your staff?” Well, his answer to me was, “Well, we hire according to qualifications.” Well, to me that’s not a bad answer, but it’s not good enough an answer to me.

Now, at the present time, we have eleven and soon to be we will have twelve congressional representatives from the State of North Carolina. To me it makes sense that because of th—and we are not talking about quotas, we are talking in my way of thinking what’s practical. We are talking about a group of people who constitute twenty-two percent of the citizens of this State and we are beginning to talk about jagged lines. We have know jagged lines, crooked lines, meandering lines all along. But they have served different purposes.

They have served to practice and effectuate the politics of exclusion. But now, when we begin to talk about the politics of inclusion jagged, crooked, meandering and curved lines become a big question in the minds of lots and lots of people. The question as to, you know, the partisan politics involved in this. The Republicans did it. The Democrats did it. Why did you do it? Jus-

tice Department—and these kinds of things. Well, to me it's not important who did it. The question was with Abraham Lincoln, who was a Republican, and I'm not here to speak in favor or against any group of people. We all know Abraham Lincoln was a Republican. And the question was, well, he didn't free the slaves, for slaves to be free, he had another motivation. Well, regardless of what his motivation was, to me it was a good idea! It turned out to be a great idea! (Laughter)

Whose-ever idea it is and whoever it is that's promoting the idea of having black people to break down what has been referred to as separate-but-equal but in fact, yes, separation but inequality. And that's what this bill will help to do! It will help to further the breakdown separate—but the old separate-but-equal doctrine when it in fact was never equal. And right now it is not equal. In providing an opportunity for black people to participate in the process, a process which has and will have a major impact upon the lives, upon the life styles, upon the quality of life that black people will enjoy but cannot be anything but right and well doing in such a process.

Now, for the life of me, I'm not able to see how anybody, absolutely anyone, would be able to refer to such a process and a concept as a bad idea, regardless to whose idea it is. You see. Listen, this is not our mothers' and this is not our fathers' redistricting plan. This is a new generation of redistricting plans. And we must proceed and understand that this redistricting plan will reflect directly in terms of what we, individually, believe. Notwithstanding the fact that we might refer to what our mothers and fathers believed.

So, I'm saying the time has long since come that we face the facts here. You know, ideally the Justice Department should not need to even be involved in this. Whether the Justice Department is Republican, Democrat, or independent. Because it's something because

North Carolina and several other states never took the initiative to do, the Justice Department became involved. And we are here today debating that question and it's being referred to as a bad idea. I think it's a great idea, Mr. President and ladies and gentlemen of the Senate. I think it's way [12] overdue! I think a great deal of the debate and discussion at the time we have been sitting here—lots of us doing nothing—has been simply because there have been efforts to find a way not to do this.

. . . .

Senator Ballance: Thank you, Mr. President. Senator Barnes, colleagues. The question today is how do we measure progress. One of the questions might be. And do you do it by looking at the gross national product, housing starts, or do you try and decide how many blacks attend the formerly all-white universities, even high schools? Well, there's another side to the story. And that is whether or not we look at the human factor. And that is how we treat our fellow citizens, indeed our neighbors when we see them on the Jericho Road. And whether or not we pass by on the other side.

I stand today, Senator Shaw, as a former Republican—now a good Democrat, but I stand first as an African-American. And while I appreciate all of my colleagues of both Parties and where they stand on issues, I have some concern about credibility when some of my Republican friends tell me that they can draw a plan that creates three black congressional districts. And I look at the record and find that they voted against the Martin Luther King bill—Holiday bill. And I look at the record and find that all of my good Democrat friends have some problem with credibility when they say to me don't take all the black folk out of my district. But when they get elected by those same black Americans, they many times vote on legislation without regard to the make-up of their constituency.

And so we ought to be concerned about that question of credibility. And you may ask yourself well, Mr. Ballance, who are you, Senator? Well, I'll tell you in the words of the poet.

I'm the one who worked in the fields, bringing the cotton and corn to yield;

I'm the one who worked as a slave, beaten and mistreated for the work that I gave.

But the same poet wrote another poem and he said:

I, too, sing America; and I, too, am an American.

And when I got up this morning, I got up in my own bed in my own house. And I drove down here today in my own car. And I wasn't very concerned about being stopped on the highway by the Highway Patrol, or being beaten or detained, because my American citizenship protects me. The Bill of Rights says, "... we hold these truths to be self evident, that all men are created equal; ..." and "... they are endowed by their Creator with certain unalienable rights; . . ."—Declaration of Independence—and "... among the[m] are life, liberty, . . . and the pursuit of happiness. . . ."

We are talking about a bill that was passed by the United States Congress. And I read it recently, it's called the Voting Rights Act of 1965. It's been amended. This is remedial legislation. The reason Congress has to pass this bill is that we were not recognizing the Fourteenth Amendment or the Fifteenth Amendment and citizens who came from Africa involuntarily were not being afforded their Constitutional rights.

And so, we don't come today to try to draw lines that will benefit the Republican Party or the Democratic Party. And Senator Winner, I would—I would agree, to a certain extent, it is unfortunate that we have to draw lines. But, you know I got to where I am standing right now after the Gingles Decision. And in 1980, this Body,

the General Assembly in the 80's met four times before we got a plan that was approved by the Justice Department. And in the interim Ralph Gingles, I believe from Gastonia, brought a lawsuit. And before that we had met and passed a Constitutional amendment that says we could not divide counties. After the lawsuit was filed, we had forgotten to pre-clear that piece of legislation and we did that—sent it in, but it was not pre-cleared. And then we went to the Fourth Circuit—well, I'll say United States [13] District Court, three-judge panel; and they wrote the Gingles Decision. And yes, they said that black Americans are not entitled to a guaranteed seat anywhere.

But that's not what we're talking about. We're talking about an opportunity. Now, I don't want to talk too long, but I want to talk about, as I close here, two African-Americans. One was born in Warren County, North Carolina, was a slave. And he was taught to read and write by a white family known as the Kings. And for their good deed, they were taken down to the railway station, and placed on a train and had a sign hung around their neck that said "nigger lovers." John Hyman was sold into slavery out of Warren County, but he came back to Warrenton after the—around the 1860's. And he started to tell black people newly freed that they had a right to vote. And for that he was called an agitator. He was later elected to the House of Representatives here in North Carolina, and then to the Senate, and he was the first black man in North Carolina elected to Congress.

And then the second gentleman I want to talk about briefly is George Henry White. And he was born in Rosedale, North Carolina. I don't know whose district that's in. But he went to Howard University, studied law, and then he went down to Wilmington, North Carolina, after passing the Bar—excuse me, to New Bern, North Carolina, and opened a law practice. And he

practiced law and later became Solicitor in the Second District. And he was later elected to the State House, and the State Senate, and he was elected to Congress in 1896, and again in 1898. And in 1898, he was the only black American in the United States Congress.

Now, you know, they had a debate on reapportionment. I don't know how I came about, Senator Winner, but-uh-I have in my hand a copy of the Congressional Record from January 29th, 1901. And Congressman White stood up to speak on that day and I guess they were debating the agricultural bill. And he talked about three or four minutes about the agricultural bill and then he said, I'm going to use the rest of my time to speak because last week when you were debating the reapportionment, one of my colleagues from North Carolina, Mr. Kitchin, and some of my other colleagues has [sic] a lot to say about black people. And they made some rather scurrilous [remarks] about them and I could not even answer those remarks, Mr. President, because he was not recognized to speak on that occasion. So he had to wait until he got the floor and he went back and debated the issue at the time and he said, if you will bear with me, "I want to enter a plea for the colored man and colored woman, the colored boy, and the colored girl of the country." And he went on—he made an eloquent speech and he talked about the progress that had been made in thirty-four years from slavery and how the illiteracy rate among black people had been decreased by forty-five percent in that short period of time. And how much money blacks had put into schools and colleges and into homes.

And one thing I do want to share with you, if you will bear with me, he talked about an election in North Carolina in the town where this young man, gentleman, was born. "In August last, at the election in Scotland Neck, North Carolina, which had registered white vote of 395 most of whom were, of course, Democrats and a registered colored vote of 534, virtually all, if not all of

whom were Republicans. When the count was announced, however, there were 831 Democrats to 75 Republicans. But in the Town of Halifax in the same count, the results were much more pronounced. In that Town the registered Republican vote was 345, and the total registered vote for the township was 539. But when the count was announced it stood 990 Democrats to 41 Republicans; or 492 more Democrats voted than were registered." And so you can understand how he lost that election, he was a Republican, by the way.

But the final thing he said which has sort of become famous in his remarks in this speech, some call it his valedictorian speech—Mickey Michaux has probably quoted him, and I am to going to close with these remarks, Mr. Chairman, and I do support this bill even though it meanders somewhat, it's a remedial piece of legislation. There may come a time when we can come back here and do away with the so-called black districts and can elect people based on their qualifications, but Congressman White said this on the floor in 1901.

"Mr. Chairman, this is perhaps the Negro's temporary farewell to the American Congress. But let me say, phoenix-like he will rise up some day and come again. These parting words are in behalf of an outraged, heartbroken, bruised and bleeding but God-fearing people, faithful, industrious, loyal people, rising people full of potential force. Mr. [14] Chairman, in the trial of Lord Bacon, when the court disturbed the counsel for the defendant, Sir Walter Raleigh, raised himself up to his full height and addressing the court said, 'Sir, I am pleading for the life of a human being.' " Mr. White continued, "The only apology that I have to make for the earnestness with which I have spoken is that I am pleading for the life, the liberty, the future happiness, manhood and suffrage of one-eighth of the entire population of the United States."

Mr. White lost the election. He went on to move to Washington, D.C. and invested and created an all-black town called Whitesboro, New Jersey. He died and was buried in Philadelphia. And finally I was coming out of New Bern one day, back when I was thinking about running for Congress, and I saw a sign that said GEORGE H. WHITE. I knew about Mr. White and knew where he had worked and I want to give the historical people credit; and I applied brakes and turned around and went back and read the sign. And in Warren County on Main Street there is a sign put up by our historical people that mention[s] JOHN ADAMS HYMAN. Thank you, very much.

Lt. Governor: Senator Simpson.

Senator Simpson: Mr. President. Mr. President, ladies and gentlemen of the Senate. I want to speak just briefly on the bill. I'm not going to try to speak as a lawyer versed in congressional or any other kind of redistricting. Because I haven't even read the Gingles Case and I don't know much about it. But, Senator Soles, with the rates they paid for the last court case we had, a million, three—it'd probably be two now, I'd learn to be a congressional redistricting lawyer.

But, I've thought a great deal about the bill that's been presented to us and how I ought to react and how I ought to vote. And I remember one time reading in the Old Testament that the sins of the fathers would be visited upon the children unto the seventh generation and I couldn't ever understand that, Senator Ballance. If my father shot someone, then I'd in turn be sent to jail for it. It didn't make much sense to me. But I heard a sermon one time. And from what I heard from that preacher, we are not wrestling, those of us of the white race, are now wrestling with the sins that we committed against the black man years ago.

And I'll say this, also, that I want the black people of this State to have two congressmen in the United States

Congress. I think they deserve it. The question how do we do it without defying the laws of geography and the logistics and without ignoring commonality of interest and contiguity of territory. And I'm not sure I know how to do that. But Senator Winner, I think that if we left the politics out of it and, and went to a computer and quit trying to protect incumbents whether it's Cass Ballenger or Tim Valentine or whoever it is, but let's create these two districts without regard to partisan politics whatsoever. I noticed the Wall Street Journal said on the first one we created was computer generated pornography, it might of been pornography but it wasn't computer generated. Computer's don't come out with anything that isn't put in them. If it's pornography somebody else created it.

But, if we would go to the—Gerry Cohen and Leslie Winner and say, "Look, we want two black districts and we want the rest of the State divided up geographically compact with the people having commonality of interest with the districts being contiguous," I think we would come back with something that would do exactly what we want to do. And exactly what ought to be done. We haven't done that. When you've got one district dividing two others with maybe some one point at a cross-roads the districts being contiguous, when that isn't necessary to create a black district, then we are not serving what—the people of this State, we're not giving them what they want and what they're entitled to have.

And what I'm afraid of is the way that we've approached this project, that we are increasing the disdain and the revulsion that a lot of the people of this State have for politics and government. And I don't really think that's necessary. I don't think that—that people in one end of the State who may never see another congressman ought to be required to have to acquaint themselves with the—a congressman who lives two hundred miles away. And I don't think it was necessary

in the Fifth District to run from Glen Alpine to Kernersville where it takes two hours to go on an interstate highway at 65 miles per hour. I don't think all that's necessary.

[15] And I think that what we're doing with the way we're approaching this subject is severely injuring the whole concept of representative government as we have known it. We may be like the flies that are—that are—that are planting their eggs that will create maggots that will eventually eat the entrails out of the representative forms of government as we know them and as our people are entitled to.

You may say, oh well, this is just one redistricting plan. It isn't important. It won't [have] that effect. If it's one nail in the coffin of representative government, and we helped put it there, that's too many!! And I think we ought to back up, Senator Winner, I think we ought to go home; I think we ought to tell the staff to create us one without any regards to incumbency; without any regards to partisan politics, and I assure you we will come back and have a plan that will protect representative government and we can all be proud. We may lose a few of our friends from seats in Congress, but I think we would then have truly accomplished something for this State and this Nation. And because we haven't done that I'm voting against this bill.

[15] Senator Martin/Guilford: Mr. President.

Lt. Governor: Senator Martin.

Senator Martin/Guilford: Request permission to debate the bill.

Lt. Governor: You have the floor.

Senator Martin/Guilford: Mr. President and Members of the Senate. I'd like to speak in favor of the bill. A lot of the things we've been talking about here today, I

guess, relate to the contrast between what is ideal and what is reality. A lot has been said in terms of what would be an ideal situation, such as if a redistricting plan could be drawn without consideration to partisan politics. However, we all know that the redistricting process is one that is partisan and whoever happens to be the Party in power at that time usually seeks to influence the outcome of the districts in the manner that's favorable.

At the same time, there's been a lot of discussion in terms of an ideal situation in which we should not have to have a Voting Rights Act; where there should not have to be a submission of two predominantly black congressional districts. Again, however, the reality of the situation dictates something different. It dictates that we do exactly what we are in the process of doing now.

In order to come up with the plan that has two predominantly black districts in which there's a reasonable opportunity for black persons to be elected or for black citizens within those districts to have significant deter—possibility of determining who will be representing them, we have to do pretty much what we have been doing in this entire process. A lot of concern has been raised about whether or not this is going to be the demise of representative government. Whether or not this is going to lead us back to a sick situation of segregation, separate-but-equal, and I would say the answer to both of those is no.

I don't think that this plan will lead to the demise of representative government. The way that it is drawn even when you consider the effect of incumbencies, it might not look too nice on the maps and in the newspapers but at the same time, the way it's drawn I think most people in the districts that are drawn do want the people who are currently representing them to do so. At least, someone that has a similar philosophy, similar interests in terms of what their concerns are. So, I think

that it's not going to cause a demise of representative government.

By the same token, I don't think it's going to lead to a situation of segregation—political segregation. I guess you could define political segregation as a situation where you have voters, but there is not any power or not any control in terms of what happens when that vote is cast. By having two districts that are drawn in which you have black members representing a majority of black people, you have the voting, you have the numbers, but you do have the power, you do have the control, because those persons will have some influence on what happens in Congress; will have some influence on what happens in representation of their constituencies; and I think, again, that would contrast with the idea of segregation.

And, again, those districts are not totally black. They're [sic] substantial numbers of white population within those districts; roughly forty-five percent on the average. So, therefore, it's going to be a situation where everyone gets used to the idea of operating within the [16] context of where they have a black congressman, or congresswoman, whatever the case might be, and as has happened in the General Assembly when we first, after the redistricting in 1982, before there were significant numbers of blacks elected to the General Assembly—the House or the Senate. I'm sure there were a lot of people in the general public, and probably a number of people who actually in the General Assembly, that had some concerns about how competent will this fellow or that lady be? How well will they be able to represent us? Will they be quality people like we are? And a lot of the people who are represented by these individuals probably might of had some questions, can I depend upon those persons making good decisions—sound judgment?

Now, while we might not always agree upon what actions are taken, I believe that all of you, or most of you, here and in the House have found that as a result

of the black members who have been elected I think you probably feel more comfortable than you would have before any of us were here. You probably feel more comfortable in knowing that the decisions that we make, the policies that we push, are similar in many respects to the same things that you would do and are representative. At the same time, you can expect that there will be certain special interests, ideas that we would push and hopefully, you will see the merits of those.

In essence, what I am saying is that given the time, I don't believe that we will have a situation again of political segregation with these districts. And who knows, ultimately, as a result of those higher expectations and those aspirations that will begin to be fulfilled by people who have, in fact, been disenfranchised but not necessarily being able to determine who is going to represent them. As a result of this, these higher expectations and aspirations, we could lead to a situation where several people have mentioned we would not need to have a continued drawing of lines in which we have to provide—go to special efforts to provide—go to special efforts to provide—an opportunity for any segment of the population being elected. Rather, it will become a natural course of events. That's ideal. We are not there now.

This is a situation of reality that can lead to that ideal. And I would hope that all of us would leave here with, not the concern of what damage this is going to do, but looking at the positive aspects that can come out of it for all of us and looking at it from the standpoint of well, we've done what was mandated. We've done what a number of citizens have desired and we have to all work together to make sure that we end up being able to reach that high ideal at a later point. Thank you.

Lt. Governor: Senator Daughtry, were you—on your feet a minute ago, and then Senator Odom?

Senator Daughtry: I yield to Senator Odom.

Senator Odom: Mr. President, I'd like to speak on the bill.

Lt. Governor: You have the floor.

Senator Odom: First of all, members of the Senate, I want to also commend Senator Winner and Senator Walker and the staff, especially Gerry Cohen, for what they have gone through over the last several weeks. They've done yeoman service for us and I hate to stand up here and say to this Body that I cannot support the plan that we have in front of us. And I have to do it for really three reasons.

First, I disagree with the interpretations of the law. I do not believe that the Voting Rights Act requires that we do this.

Secondly, I think it defies common sense.

And, lastly, it, in my judgment, will polarize Mecklenburg County and the City of Charlotte, contrary to what we have experienced over the last twenty to twenty-five years.

It's my judgment that the Justice Department of the United States in this six-page letter has made a mockery out of the 1965 Voting Rights Act. I have also read the Voting Rights Act. I've read the Gingles Decision. And first of all, the Gingles Decision deals with a different concept and that is multi-member districts. It doesn't deal with the concept that we have in front of us now. It's my understanding that there is no United States Supreme Court case that requires us to do what we are about to do and that is, erase commonality—erase common sense—and simply rely upon blind computer stupidity! And that's why I'm against it.

[17] We're here, in my judgment, because of one political appointee of Mr. Bush. And his name is John — better be sure I am right, I called him Joe Doe earlier — John Dunne. And I will challenge everyone of you with any common sense—

Senator Kincaid: Mr. President—

Senator Odom: (continuing) to read this letter—

Lt. Governor: Senator Kincaid, for what purpose do you arise:

Senator Kincaid: Will Senator Odom yield?

Lt. Governor: Senator Odom, would you yield?

Senator Odom: I will not yield. I will defy anyone to take this letter that came from the Justice Department and this is what everyone is referring to that is compelling us and driving this train that we're on to figure out how in the world he could have turned down the plan that we sent. There're only two references. There are no facts. There are no findings of fact. There are no conclusions of law. He says, "... The proposed configuration of the district boundary lines in the south-central to southeastern part of the State appear . . ." appear! No facts! Nothing! "... appear to minimize minority voting strength."

And then over on page five of this letter after talking about several other plans, he says, "... these alternatives and other variations identified in our analysis appear to provide the minority community with an opportunity to elect a second member of Congress of their choice to office. But despite this fact such configuration for a second majority minority congressional district was dismissed . . ." was dismissed "... for what appears to be pretextual reasons."

Ladies and gentlemen of this Body, what we have is no longer a government by law, but we've got government by one man making an interpretation for political reasons. And that's the only conclusion you can get when you read this letter.

Senator Winner said it correctly that our United States Justice Department should be above petty politics. And,

yes, we all recognize when legislative bodies get together, and this has been the case time immemorial, Mr. President, there is going to be partisan politics because that's the way our system of government is set up. But the Justice Department should not become a no-Justice Department and a political ram.

Senator Simpson, I did exactly what you are asking this body to do. I favor us having a least two minority-majority districts. And that would suit me if we had six. And I went to the staff and I'm sorry that I did now because I think that I wasted a lot of their time and a lot of their effort and that computer time, and I said create two minority districts in this State even with a variation of ten percent in populations and I don't want to know where any Congressman, Republican or Democrat, lives. But let me tell you what I want you to do. I don't want a county divided unless it absolutely has to be and I do not want a precinct or a neighborhood divided. Do you know what, Senator Simpson? You can't do it!! You absolutely cannot do it. Unless we get the law changed to where a congressman can represent non-contiguous areas. And that's where we're going.

And that's what Senator Winner said the former Senator East was talking about on the United States Senate floor. So, I'm telling you, there's no need to ask the staff and the computer to go do what you're saying, I've already tried it. Because I wanted—I even went to some of my Republican friends, and some of my minority-race friends and said let's see if we can't put together a plan that doesn't have any politics in it. And I was ready to do it. And the people in here that I talked to know I tried to do that. But you cannot do it under the present law.

This plan is bad! It does polarize the races in my judgment. It does—it will do, I think Senator Kincaid touched on and I agree with you, Senator, —if we had the districts that we now have only multimillionaires

will be able to run for Congress. There is no way humanly possible that a man or a woman is going to be able to put together an effective campaign that crosses several media market[s]. Not to talk about the time that it would take to campaign.

Now, what's the alternative? I've ranted and railed against the plan we're going to pass, I'm sure. The first is to submit to a plan that the no-Justice Department in Washington demands. The second alternative would be costly litigation. I originally said I wouldn't vote to go to court and spend the taxpayers money. But I am now convinced that we're going to go to court [18] whether we pass this plan or we don't go to—don't pass this plan, because somebody is not going to be happy. We're going to wind up in litigation. And if we are, I suggest we go ahead and face it head on. Because, there is no United States Supreme Court case that requires that we do what we're about to do.

Some of you may have gotten this and I just want to read just a small portion. There are twelve pages of a paper that was sent to me day before yesterday by a professor. His name is William E. Jackson, Jr. and I want to tell you he's a liberal Democrat, but he entitled his paper "Congressional Redistricting—An Abomination Against Liberal Democracy." And he gone on and sets forth all of his reasons. And I will let anyone see this afterwards that would like to.

But on page 2 of his paper, he says "... Is there not something utterly vicious about representation in a democracy if voters in their communities face the specter of voting booths at so many pit stops along the Interstate 85 corridor in the most freshly carved district. Literally, they will have to check the census tracts to figure out which congressman represents them. In some cases depending upon whether the constituents live along the north-bound lane or the south-bound lane of the Highway." And he goes on and says this is a mockery of the system and I agree with him.

One of the problems I have, and I'm close to finishing up, is that our plan gets turned down and this letter says how are you to fix it. How do you fix it? Senator Hyde, it's like saying to you go build a house. Build it the best you can without a blueprint, without a drawing. And after you are through with it, if we don't like it, we'll make you tear it down and start all over again. And what we are about right now is the building of the second house and my judgment is it's going to be torn down by order of the so-called Justice Department.

My conclusion is this. I can't vote for something that takes away what we've done in Mecklenburg County and that is elect minorities without having districts—especially carved districts. I can't vote for a plan that takes the heart out of Mecklenburg County even if we would wind up getting a second member representing us to the United States House of Representatives but takes the heart out of the community that I love so much.

Secondly, I believe that the voters in our district and up and down these districts are going to become cynical, apathetic, even more than they are now. I cannot see us trading common sense for what appears to me to be computer stupidity! I don't want to go to court. I don't want to waste the taxpayer's [sic] money, but we are going to wind up going there and I'd just as soon go now and go on my terms than later, [—]

. . . .

[19] Senator Lee: Mr. President, and Members of the Senate. I have hesitated to rise, but as I do my mind goes back to 1968, my first entrance into the political arena as a campaign manager for Reginald Hawkins, who ran for Governor at that time. It was the first opportunity that I had to travel the State, get to know many of its people, and to cut my teeth.

It was also the same year that a young lady by the name of Eva Clayton from Warrenton ran for Congress in

the Second District — and did quite well, I though[t], in a not a majority-minority district, but certainly a heavily populated minority district. It was in 1972 that I had expected to announce plans to run for Congress in the Fourth District, which at that time consisted of Wake, Durham, Orange, and parts of Chatham County. Unfortunately, late in the redistricting process of 1970, Orange County was moved from the Fourth District to the Second District, but I ran for Congress anyway in a district that was approximately forty percent black.

It was a good year, because I had the good fortune, at that time, of meeting a young man who was a staff assistant in that campaign by the name of Toby Fitch. And we campaigned all across that District. Got to be good friends, got to know each other. And we lost the campaign to an incumbent by the name of L. H. Fountain. I've never, ever, said that I have won or lost a race, a campaign, because I was black. And that was not the case in 1972.

And I'm, personally, uncomfortable by the debate that we're having and the basis upon which we're having it. But I'm also a realist, and I'm also uncomfortable about the fact that our communities are still geographically divided by race in terms of where people live. And so, consequently, we have allowed people to develop doubts and to lose confidence in the system. And there are many reasons for that, and I want to iterate them here.

The Voting Rights Act, when it was passed, was necessary. And any time any law is passed into existence, there is always the possibility of not only using that for good, but also for using it for bad. It always exists. And we should know that.

I came back to this Body with my mind made up that I wanted to urge the leadership to go to court. Not that I can any way be opposed to minorities being elected to Congress, and if I did not favor it, I wouldn't have run

myself, but I didn't run as a minority—I ran as a person who was running for Congress. And I shall always do that in all my races as I have always done it in all my campaigns and I will do it in the future.

[20] I don't like the way we got here, but we're here. And we must not apologize for having to now do things that make us uncomfortable but let's do them.

In 1972, I heard the argument that when we moved Orange County out of the Durham-Raleigh-Wake County-Chapel Hill triangle, that it would destroy the cohesiveness of the community. Well, it didn't. We were uncomfortable. We didn't like it then like we don't like it now, but it didn't [sic]—it did not destroy the cohesiveness of the triangle area. It will make us uncomfortable, and we don't have to like it, as I don't like it, but it will not destroy the communities unless we, the leaders of the State, allow it to destroy the communities. It's like taking castor oil — who knows whether it does any good or not, but there comes a time when you have to pucker your mouth, Senator Simpson, and take it.

Blacks—I'm concerned that I don't subscribe to the separate-but-equal concept. Because I don't see these districts as being separate if we put them into effect. And I do see them as being equal. I see them as being a part of the twelve congressional district consideration representing the whole of the State of North Carolina, and we should not refer to them as being separate.

Senator Kincaid made the comment that well, if you develop these districts, blacks will run out and vote for blacks. Well, that begs the question, and I wish Senator Kincaid was in here — there he is — does that mean that you believe that whites will only vote for whites? I don't think that's the case. I really don't. I am not naive enough to stand here and represent to any of you that I'm not aware of the fact that there is still prejudice and discrimination and racism and bigotry existing in our

society. But we have symbols and examples all over this State where decent, good, and right-thinking people have come together and elected good, qualified, right-thinking, upstanding, successful, and effective people in public office.

I don't think this will destroy North Carolina. And if we go ahead and accept it with distastefulness and find the positive in it rather than looking at the negative, we can build on it to make our State stronger in the long run and not allow it to weaken us in the short run.

Someone else has presented a plan and raised the concept and the Justice Department could very well come back and ask us to do this, that we can now create a third minority district. Well, I live in the Fourth Congressional District, which is now made up of Orange, Wake, and Chatham County. And these Counties, including Durham County which is not now in the Fourth District, have a history of electing those most effective candidates who go out and represent themselves and who will get elected. Now, I don't expect my Congressman to retire any time soon. But, should he decide not to ever seek re-election, I can tick off five people, in my opinion, who could be elected in this District.

So, I hope that we will see the fact that in this new plan, the Fourth District in my opinion, has been made a much better District and in the long run offers an equal opportunity for another person who may be minority to run and get elected in this District.

The comment has been made that you almost got to be a millionaire to run in these districts. Well, you almost got to be a millionaire to run for Congress, period. Do you know how much money people have been spending to run for Congress in the existing districts? It ain't going to change anything!! And you know why it costs us so much money, it's because we want to use television, instead of using our feet and our legs and our

hands and getting out and meeting people. We take the easy way out as politicians. So let's not put it all on the fact that the district causes us to spend all this money. It's the way we campaign now. It is a long ways from Durham to Charlotte. But, I tell you, it's a whole lot easier to campaign from Durham to Charlotte on 85 than it was a campaign from Orange County to Northampton County in the Second District when the roads were all two-lane and we drove every one of them.

It was a whole lot easier to campaign from Durham to Charlotte than it is to campaign from Charlotte to Wilmington. So, I think we are kind of making special efforts, friends, to look for reasons to get out of this. And while I came back here with the determination and the attitude of let's fight, I think we owe it to the State and to the citizens to put forth what is [21] a little bit better plan — still distasteful — certainly one that holds out the possibilities that the masses of minorities out across the State can at least feel that they are having some input.

One final comment. In 1900, there was a fellow by the name of William B. Lee who was in the Senate, of North Carolina. And Lee was a great debater, and if I believed in reincarnation I might have some thoughts of checking that out, Senator Daniel, to see if there's any relationship back there anywhere, but the same kind of argument that I'm making now, as I briefly read some of his comments he made; but the words I want to leave with you is that, yes, this is partisan politics. That's what politics is all about. Yes, you make decisions to protect yourself. That's what life is all about. And for those who say that the Democrats are trying to keep power — yes, because as Frederick Douglass, a former slave, once said, "power concedes nothing without a struggle." It never did and it never will.

And whoever is in power will do what they can to protect it. And those out, will do everything they can to

get it. That's the name of the game. I'm going to vote for the bill. Because I think based on what we have been told, and the fact that we're working against a Justice Department in my opinion that is not all interested in the people, but a Justice Department that rightly so is interested in the politics of it. But I'm going to vote for it and I urge my friends to join with me and let's get on with this.

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Senator Daughtry: Mr. President. Mr. President, I thank you for recognizing me, I will only take a minute to comment about the congressional plan. I have been involved in redistricting since the outset and have some idea about the—whether or not we can draw a district that is more compact than District Number Twelve.

I think Senator Lee was exactly right. This is a power play. That is the name of the game. It's whoever has the high cards can now play them and then we go home. But I also believe we have some responsibility to the people of this State, irrespective of politics to do better than District Twelve. The I-85 District. There is nothing about that district that makes any sense to the people of this State.

Certainly, it makes sense to us who are in here and power is the name of the game. But it doesn't make sense to the people. And another thing about the district, Dennis Winner is a good lawyer. He's also a good salesman, because he is selling this District Twelve to the people of this State on some idea that it is because we have District Twelve because of the Bush administration. That the Justice Department through some conspiracy has required us to have District Twelve.

That is not the case. Now, one thing I really resent about District Twelve is no one in this Building that I know about drew this plan. This plan did not come from

our staff. After long hours of looking, as Senator Odom said, someone said, well it can't be done, and here we have District Twelve. The rumor spread, and rumors abound in this Building, but as I understand it District Twelve was sent to us by the Congressmen who are in Washington. They have nothing to do with the Senate or the House, but they decided to draw a plan for us. I resent that. I think we can draw a plan in the southeastern part of this State that is more compact, that has more common sense, and certainly will please the people of this State more than District Twelve.

I agree with Senator Odom. It's not fair to Mecklenburg County. It's not fair to anybody who has to campaign in that kind of district. I have not heard one good comment about District [22] Twelve from anyone anywhere. I urge you to turn down this District. Let's draw a district to the southeast that will meet the criteria and go home. Thank you, very much.

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Senator Walker: What I would like to say is that I think we all look at this in taking blame because we all have blame. I go back to 1972 in a state-wide race in which I think it became a race between two men and racism came out. Jesse Helms won that race. He wasn't elected by just Democrats or just Republicans. He was elected by the people of the State and I think it was in the feeling that that's who they wanted. We have certainly gone through a number of re-elections and we came down in 1990 to another race, and a race I think that will go down in history. Because we had Harvey Gantt, a black, running against a white male, Jesse Helms.

And we came down to that race, a very close one, to show that perhaps North Carolina had changed. I certainly hoped that it had changed. Because I worked hard for Harvey, as all Democrats did, and yet one little

thing, I think, at the end came out and that was a TV commercial that had the crunching of the application or that notification and we got back to quotas again.

I hope that won't be an issue in the '92 race, Presidential or otherwise, for any of this 'cause I think we've come so close in North Carolina to being a State that could really say that any man, any woman could run and be elected regardless of race or sex.

So, I just want to say I support this bill because I think so far as the blacks are concerned that yes, they deserve two black districts. After going through a 1990 race, they can see we still need to make some improvements in how our relationships are between our people. So I say to you, let's see how this works.

I know a lot of folks have said they don't like this plan. It doesn't look good. I came back here after our called session in the end of December and thought well we need to take another look because they've said we need a second plan. Senator Winner was out in the Grand Canyon on a backpacking tour and I got with staff, worked, trying to come up with a second plan. Because I felt like we ought to go ahead and we made the commitment to two black districts. I [23] certainly hope that it will work out all right and that we can prove that we have done a good job and that we can support this bill.

I also remember the Lieutenant Governor, our President, who was talking about Randolph County in another era when there was a lot of changing back when he ran. He represented my County. But I think one thing was different then, we didn't have the one-man, one-vote rule and there were a lot of changes. Now, I think we do have the one-man, one-vote rule and until that's changed then I think we ought to abide by it and to try to come up with these districts as much the same. And also if they say under the Voting Rights Act that we

should be sure that the blacks have representation. And they certainly have almost a quarter of the population in this State, then we ought to have the two. And I support that. And I support these two districts. And hope that you will vote for them.

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Senator Richardson: And the only reason I do that — I hadn't planned to get up to say anything. The other black Senators had said basically what I wanted to say, but I just wanted to say one thing in answer to Fountain Odom; and to my good Republican friend.

Now I know 106 people, I don't know all 106 of them, probably, in Mecklenburg County. Fountain was saying that it was going to tear Mecklenburg all apart, but I can speak for 105,900 of them that they are happy to see this plan. And I had to say that because if I go back home they would wonder why I didn't answer to that.

We are still leaving 27,000-28,000 people, black people, for District Nine, and even 128 for District Eight. Senator Winner was saying — not Senator Winner, somebody was saying that we're going back to segregation. We still have in District Twelve, we have forty-five percent of the people in that District are white people. So, that is not a segregated district. It's just a district that the majority of the people in it are black. But it certainly isn't a segregated where everybody in the district are [sic] black. So I don't see where we're going back to segregation. But I can guarantee you out of this 106,467 black people in Mecklenburg, we are very happy to have a black representing us in Congress. Thank you, very much.

Lt. Governor: Senator Cochrane.

Senator Cochrane: Thank you, Mr. President. Like Senator Richardson, I had not planned on making comments on this either. I think having served on the

Committee, having spoken as often as I have, you are pretty aware of my feelings. But I think it's important, having listened to this debate today, to make a comment.

If there is an effort on the part of this Body to make this a black and white issue, you are going to fail. It is not! I'll tell you right now that I am one Republican voting against this map because it is gerrymandering of the most partisan order. I have no problem with blacks getting elected to anything and they do in my area to county commission, to mayor, to school board, to town board, to whatever. And this is not a racial issue, it is a partisan issue. And those of us who are Republicans that will choose today to vote against this map are voting on it for that reason.

Say what you will, let the reporters say what they will. I will tell my people and they will believe me because the letters I'm getting and the phone calls I'm getting are about the very kinds of partisan issues that we've tried to bring to the attention both in Committee and on this floor.

When I represent a county of little less than 29,000 people that ends up being in two congressional districts, and there is a feeling of total impotence at that point because they see little ability to influence either congressman. That's what these votes are about today. Historically, the government of this Nation was developed with the Senate which gave every state the sovereign right of two representatives. And a House of Representatives was created in an effort to give representation for the people. And it is that representation for the people that [24] we are talking about in this congressional plan today.

And I am here representing mine, as I am sure you are representing yours, and that's what this map is about and that's what this vote is about. And it is not a racial vote.

If you will recall, Republicans have been pushing for some of these other minority districts because I can only repeat again to you what I've said before. What we do to help other minorities helps us as a minority, also. Thank you.

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Senator Winner: Yes, there are places in here that there's point continuity. There's no law, incidentally, requiring congressional districts to be contiguous. But that, we certainly want them to be contiguous. And while I'm up here, about that point, because Senator Simpson raised the point about point contiguity, the — where, I can't tell you where they are, staff will have to tell you that because I'm not—have that kind of detailed knowledge about this plan. But they're in there and that's how it happens.

And if you did not have that, when you have something splitting through the middle of a county, you would end up with three districts in the county instead of two. And, for instance, the original I-85 plan did not come from Congress but came from Representative Balmer. And in his plan—this plan has the bad feature of having three—seven counties up in three districts, and I think that's terrible. Our first plan which we sent up there had no counties cut up in three districts.

Balmer's plan, because I don't think he had as much point contiguity in it—I think he had some, but Balmer's I-85 plan, which is fairly identical—close to this as far as that district goes, Balmer's plan had ten counties cut up into three districts and one county cut up into four districts. So, that is the reason for that. I can—I'm sure Mr. Cohen can show you where those points are. But there are places where districts come together at a point so they both cross over.

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SENATE COMMITTEE ON REDISTRICTING

January 24, 1992

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[7] DAUGHTRY: In your conversations with the Justice Department were you ever led to believe or were you ever told that in forming a minority district not to use the Indian population in the southeast.

COHEN: No, we were never told that we were to or not to, the Justice Department did ask us to examine the southeast as part of looking at this, in areas in Wilmington, Fayetteville, Chadburn, Whiteville [sic]—that area. In the congressional district. We did examine the southeastern part of this plan and it did included [sic] part of the southeast.

DAUGHTRY: The question I asked was were you ever told or led to believe that not to use minority—in drawing a minority majority district.

COHEN: We were never told one way or the other whether Blacks or Indian, or whether Indians were to be used or were to not [8] be used. Our analysis of the election districts in that area was that what the court cases say is that you can only count minorities together for meeting this kind of goal—different minorities if they have cohesive voting behavior. The analysis of election statistics that we provided the Justice Department indicated that Blacks and Indians in the Robeson-Hoke-Scotland county area, and the data from Robeson is mostly the best because there are precincts that are nearly one hundred percent Native American — is that these groups do not have a cohesive voting pattern such that including them in a congressional district would satisfy the requirements of the Voting Rights Act. Now there were [sic] other testimony to the Justice Department contrary to that, indicating otherwise. The Justice

Department never really in their letter came down in one side or the other on it. They mentioned that as a possibility for doing another congressional.

WINNER: Let me ask you a question about that.

COHEN: Yes.

WINNER: Isn't it true that the Twelfth District as it is in this plan has a larger Black percentages [sic]— population, registration and voting age population than the Black and the Lumbee Indians combined in Balmer's drawing in the District that they seemed to indicate might be okay.

COHEN: Yes, that's correct. This takes what is— this takes what was a [sic] open question of the Voting Rights Act under whether that satisfied it or not and replaces a district where there was no question under the Voting Rights Act.

DAUGHTRY: Let me—Can I finish? I have a couple of more questions.

WINNER: Yes, certainly go ahead.

DAUGHTRY: So, am I to understand that the Justice Department did not infer you or in any way indicate to you that you could not use Indians in drawing a minority district.

COHEN: They did not tell us whether it was acceptable or unacceptable in the letter; they suggested that we take a look at it.

DOUGHTY [sic]: Secondly, did they also tell you that when you are attempting to draw minority-majorities and draw any of these districts that they were as much interested in influence districts as they were drawing the minority-majority districts, especially in those areas where you could not draw viable districts by picking up people in each community. Did they ever talk to you about minority influence districts in those cases.

[9] COHEN: We had only minor discussion of that issue. The discussions, in fact, of that involved around the Fourth Congressional District where in the State's response both in its initial submission, later it extended on in great detail in the response to the ACLU comments and also in response to the additional information. That, in fact, the State's position that its enacted plan does have another minority influence district, and that's the Fourth Congressional District. The election statistics for Wake County, Orange, Chatham County indicates that Black candidates have an opportunity to elect a candidate in their choice for congress in the Fourth Congressional District. And, in all due deference to Johnston County in the earlier plan, in fact this strengthens that particular analysis by removing from that district precincts in Johnston County and adding some in Chatham and parts of precincts in northern Orange County. And I think that if we continue to be the State's position that there is another minority influence district in this plan, The Fourth Congressional District. Some of the alternate plans take Raleigh, the Black community in Raleigh out that district and would eliminate that as an influence district.

DAUGHTRY: One more question.

WINNER: Okay, are you going to be on influence districts again? On this question became I want to ask a question about that.

DAUGHTRY: Let me ask mine, first.

WINNER: Yes Sir.

DAUGHTRY: The I-85 district, in the House plan is a long, meandering district. It is not something that would be relatively easy to do to instead of drawing such an unwieldy district that has nothing in common with the people, that is it goes so far. It goes from the east all the way to the mountains nearly. Couldn't you have drawn instead of that minority influence districts, and isn't it

your opinion that the Justice Department would have accepted that, rather than this long district?

Cohen: I think it's an open—I think first of all this configuration here came from a plan that David Balmer submitted to the Justice Department in August. It came from a plan that was entitled Balmer Congressional [sic] 8.1. This district looks nearly identical to a district that he proposed to the Justice Department as an alternative in August. Ah, that's the first time that it appeared. It has some minor differences from that. I think the question of having it in common is an open question. I think you have a lot of people who would say that the Black communities in Raleigh, excuse me in Durham, Greensboro, High Point, Winston-Salem, [10] Charlotte, Gastonia have a lot more in common than —I think they said this on the House floor, than do the Black populations in Charlotte, in Lumberton, in Wilmington. I think that's an open question —I think there's arguments on both side[s] for that, but I would not say there's nothing in common between the urban Black community. In fact, the House plan takes a district that although it stretches that distance—it's very urban in nature and has much in common.

Some of the alternate plans, for instance, an alternate plan on the House floor yesterday had a so-called minority district that ran from Charlotte to Raleigh, that's thirty miles longer than this one from Charlotte to Durham that was proposed on the House floor yesterday. I think it is a whole series of open questions. I think that from the Justice Department's letter that the legislator [sic] has a lot of flexibility it [sic] how it chooses to do minority districts as long as it satisfies the requirements of the Voting Rights Act.

For instance in the Justice Department's letter there was an inference about "even the First Congressional District meandering [sic] that we find that it is not do [sic] for intentional racial discrimination." What that par-

ticular comment was about was why Raleigh was not in the First Congressional District. And the reason for that was the State's position was that having Raleigh in a, not in a minority congressional district enhanced the minorities' chances of electibility to congress by having that in the Fourth Congressional District, rather than having that in the First Congressional District, and leaving some other Black community, and you know I'm not criticizing the counties involved in that area, but having, having some of those Black comments [sic] in the eastern part of the state back in the —the Second or Third or Seventh Congressional District—and I'm not criticizing that area of the state. But that having it this way enhance[s] the minority chances of electibility, especially in the Fourth Congressional District.

DAUGHTRY: Last question. That what—the Fourth District, it says here has a total population of Blacks of twenty point thirteen percent.

COHEN: Yes.

DAUGHTRY: It's your opinion that that constituents [sic] a minority influence district.

COHEN: Because what—because the voting patterns of white persons in Orange, Chatham, and Wake counties indicate a far, far less amount of racial polarization than in many counties in other parts of the state. And, that is, and that is an extremely important consideration of the Voting Rights Act.

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[11] SENATOR RICHARDSON: I wanted to say to Senator Daughtry. You know I was leaning toward going down in Robeson County myself until I heard the public opinion up there. But the Indians themselves said who wants a minority district, but we sure don't want you to mess with Charlie Rose. That proves to me that they are saying that they wouldn't vote for a minority [12] district if you got to mess with Charlie Rose.

DAUGHTRY: Could I answer that, Mr. Chairman.

WINNER: Yes, even though you're getting out of order.

DAUGHTRY: But he addressed that—

WINNER: Yes sir.

SENATOR DAUGHTRY: To respond to that I was at the public hearing also and you talked to approximately two people, but there was not consensus about that and the question really is whether or not you can draw a minority district in the southeast, and obviously you can. The Justice Department said you could and it's compact and it's not like something going down I-85. Now whether they want to be in Charlie Rose's district. You're talking about something that's going to be ten years from now and if you stay with these incumbents. There are people who want to save Martin Lancaster, Tim Valentine's district. You can't let personalities get in the way of drawing these districts. You ought to draw them on the basis of what's best for the state and not what's best for Charlie Rose.

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[17] JOHNSON: No, more than Wake County—Wake, Harnett and Lee. But he was elected district-wide, not from a minority district. So if you look at the history of the voting in Wake County, you will easily see that the last twenty years that we have elected qualified Blacks, if you want to use that term or Blacks, you know without, a significant, without a significant racial minority.

COHEN: In Orange County, in Orange County the statistics all show a very minimal level of racially polarized voting, dating back many decades it makes up a significant part of the congressional districts, looking at election statistics for local, county officials, the state senate which includes Orange and Chatham is about half of that. Senator Lee's recent election; his electoral suc-

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cesses before that; various races where Black people have run at various levels in Orange and Chatham and Wake Counties—all indicate to me and all the evidence has been supported is that Black candidates have an opportunity to elect a candidate of their choice for the Fourth Congressional District, from that district more so than from any of the others except the two minority districts in an equal or greater level than any other alternative plan that I have seen.

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HOUSE CONGRESSIONAL REDISTRICTING COMMITTEE

January 9, 1992

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Gerry Cohen (NC Legislative Staff): Well, the Justice Department rejected the Congressional Plan. I have the letter right in front of me, but on the basis that a second district where minorities were a majority could have been created, it was their feeling that the Voting Rights Act required that based on [2] North Carolina's population and demographics. They suggested looking at the district from Charlotte to Wilmington that was in Rep. Balmer's Plan as a possible district. They suggested that by combining blacks and Lumbee Indians that that would be a majority minority. . . . The Justice Department did say that the First Congressional District, as enacted by the Legislature, met the requirements in the Voting Rights Act and there was some language in there that said although it could have been more compact that it did not violate the Voting Rights Act for it not to be more compact . . . that there was no discriminatory purpose or intent and that as long as the Legislature has created a district that affects black voting majority that I would read it that it is up to legislative discretion as to where is the State to put within that district.

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Gerry Cohen: . . . the case law does talk about compactness because part of that has to do with whether there is an affective voting majority when there is any sort of community of interest.

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[3] I think the courts are just going to begin to see the effects of this computer revolution where you could draw a district from Murphy to Manteo that was ten feet wide and it might have a half-million people in it.

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HOUSE CONGRESSIONAL REDISTRICTING COMMITTEE

January 21, 1992

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[2] Rep. Flaherty: Thank you Mr. Chairman. What this plan is . . . is the result of sitting up there in the Public Hearing the other day and listening to some people speak. I believe there was a fellow by the name of Willie Lovett and another young lady from the NAACP that ask[ed] us to consider doing two minority or two majority-minority districts which I have done in the plan in addition to an influence district in the southeast. Now the majority-minority districts would be the Second and Twelfth in my plan and they have 53% minority-black voting registration and from what I remember that was what Ms. Winner indicated as being optimal. It really has a third district, District Seven, which is an influence district, but really has a majority percentage of minorities in that district, so it is basically almost a three-minority or majority-minority district plan. The only criteria that I gave to staff with respect to preparing this plan were that they do the two majority-minority districts and the influence district in the southeast. Other than that, I asked that the districts be as compact as possible . . . that they consist of Mitchell and Avery back in the Eleventh which is where, again, they have asked me to try and keep them. I was up there just Saturday and they reiterated that they would like to stay in the Eleventh. It keeps them together with Yancey County. A lot of the things in that area, for those of you who are not familiar, are things such as Mayland Technical College or Mayland Community College which is Mitchell, Avery and Yancey. The library up there is Avery, Mitchell and Yancey and so we did keep those together. I think it is a pretty good plan. We can, of course, get the deviation down further. Under the guidelines that Chairman Hunt had indicated it was not imperative that we be down to zero or one devia-

tion. Of course, we can get that down, but I hope that you'll look at it and receive it favorably.

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[7] Leslie Winner: To give a little of the background of the plan that was mailed to you; as Mr. Cohen said, the sample instructed to start with the plans that the NAACP presented at the Public Hearing and to try to both improve the black district and also to try to make some of the other districts more compact than they were in that plan. The primary change that was made from that plan was that there was some uneasiness expressed with putting Caswell and Person and Vance and Granville Counties into the Twelfth District which is otherwise a fairly urban district and it was thought that it would be better to have that district be more exclusively an urban district. So, those four northern tier counties were taken out of the Twelfth District and instead the black community of Winston-Salem was put into the Twelfth District and also Gastonia. That in turn left the Fifth and Tenth Districts short of population and thus changes needed to be made in those. I will also add that it is anticipated that we will present tomorrow some further changes in the Ninth and Tenth Districts to make those districts be a little less . . . a little more compact by making the Ninth District primarily the remainder of Mecklenburg, Gaston and Cleveland Counties, which is a nice compact little block that has about the right population and moving the Tenth District to the north so that it will pick up Lincoln and Iredell and that will make it be more compact as well. There were dozens of little changes that were made along the way and I will be happy to answer any questions that you have.

Chairman Fitch: Rep. Decker.

Rep. Decker: Ms. Winner, does that last comment mean that you will be taking out that little protrusion to

the west that goes into Buncombe, Henderson, Polk, Rutherford and McDowell Counties of the Tenth District?

Leslie Winner: I have not been instructed to do that.

Rep. Decker: What changes then? Can you be more specific or are you making it the Tenth?

Leslie Winner: That the Ninth District would be in the remainder of Mecklenburg that isn't in the black district, the remainder of Gaston that isn't in the black district, the remainder of Cleveland that isn't in the Eleventh District. [3] The Tenth District would then pick up Lincoln County . . . I think all of Lincoln County . . . all of Catawba County . . . I think all of Iredell County in the Twelfth District and all of Alexander County . . . I can't remember whether Alexander is in the Fifth, but it is either all of Alexander or all of Alexander that isn't in the Fifth.

Chairman Fitch: Rep. Flaherty.

Rep. Flaherty: Yes, Ms. Winner, I have heard a lot about a plan that a fellow by the name of Merritt with Charlie Rose's staff is supposed to have come up with. Have we seen that plan or is that the plan that you refer to as the ACLU or NAACP plan?

Ms. Winner: The plan that we started working with was the plan that Mary Peeler presented at the public hearing on behalf of the NAACP.

Rep. Flaherty: Is that the same plan that was known as the Merritt-Rose plan?

Ms. Winner: I don't know what was known as the Merritt-Rose plan.

Chairman Fitch: Rep. Wilson.

Rep. Wilson: I have a question concerning the drawing of the lines for the 5th District. I'm very concerned about that area because that did not really include an area where it was affected greatly by the minority dis-

TESTIMONY OF MILTON F. FITCH, JR.

March 31, 1994

. . . .

[659] Q. Representative Fitch, you've now represented that community for close to ten years?

A. Yes, sir, I'm on my fifth term now.

Q. Could you tell the court the kind of issues that, in your experience, are concerns to those voters in your district?

A. Issues of worker safety, workers' compensation, tobacco issues, highways, industry. Basically the same that would affect other individuals.

Q. These concerns shared by black and white citizens?

A. Absolutely. At least 40, 45 percent I would imagine of my district is white.

Q. I believe tobacco is of some importance in that area?

A. Wilson is the world's largest tobacco market. I represent both Wilson, Nash, and Edgecombe Counties. Tobacco's big all across that area.

Q. Representative Fitch, you were elected in December of '84, I guess, and so you started in the 1985 session of [660] the General Assembly, which I assume began sometime about January 1985.

A. About January 4, January 5.

Could you tell the court a little bit about what you did in the first term in the legislature?

A. Well, I guess I didn't know what to expect, but when you got there as a freshman, folks told you freshmen were to be quiet and not talk, listen. I found that pretty hard, but I pretty much kept my mouth closed the first term and then got reelected. And the second term I

got a chairmanship. And usually you didn't get a chairmanship until third term. The second term I chaired the Committee on Housing.

At that point in time, Exxon had some overcharges and problem of the court found they were stripping wells. The Committee on Housing had responsibility of how those funds were allocated to local municipalities per the overcharges, and we dealt with that to a degree.

Then my third term I did the Committee on Public Employees, which had three subcommittees under it, which dealt with all the public employees in the State of North Carolina; their benefits, their salaries, and policies.

The fourth term I chaired Congressional Legislature and Local Redistricting. And now my fifth term I have Constitutional Amendments and Referenda.

[661] Q. By that you mean you are Chairman of that committee?

A. Yes, sir.

Q. Representative Fitch, I'd like to go back just a moment to the Housing Committee that you chaired, I guess, in 1987.

Did that committee receive reports and information regarding housing standards and availability throughout the State?

A. Yes, sir.

Q. And in the course of that, did you obtain information about where housing was needed; which areas were poor, which areas were rich?

A. Yes, sir.

Q. Now, Representative Fitch, you just indicated that you were Chairman of the House Congressional Redis-

tricting Committee in 1991. Who appointed you to that post?

A. Daniel T. Blue, who had been elected Speaker of the House, whom I had known in undergraduate school. And approximately three weeks into that legislative session, as he was putting together his committee chairmen, he called the Committee of Legislative and Local and Congressional Redistricting and called three names, and I thought he had lost his mind. He called three names of Toby Fitch, Ed Bowen and Sam Hunt and —

Q. Excuse me, Representative Fitch. So all three of you [662] were appointed by Speaker Blue?

A. Yes.

Q. Where are Representative Bowen and Hunt from? Tell us a little about them.

A. Representative Sam Hunt is from Alamance County, presently he's Secretary of Transportation for the State of North Carolina. He runs an electric supply company in Burlington.

Representative Ed Bowen is from Sampson County who prides himself as the happiest redneck in the State of North Carolina, who was very pleased to nominate a black named "Blue" for speaker. Sampson County, by the way I grew up, is known to be a redneck area, and Ed is happy to be from Sampson County.

That's why I thought that my life-long friend, Daniel Blue, had lost his mind because there I was, a black named Fitch, from Wilson, who was with a redneck from Sampson County, who was with a redneck from Alamance County. And I didn't know how we were going to all three fit in to be co-chairs together to talk about what I had understood and seen grown men cry over in the past, and that was redistricting turf and who blacks belonged to and who blacks didn't belong to.

And we were able to sit together as very understanding men and work through redistricting, both [663] through Chapter 6 and Chapter 7.

Q. Representative Fitch, would you tell the court a little bit about what you — well, strike that.

Would it be accurate that two of the co-chairs, then, were from the coastal plain and one was from the Piedmont?

A. That's correct.

Q. Would you tell the court a little bit about how the three of you went about, what your duties were as Co-chairs of the House Congressional Redistricting?

A. Our duties, as we saw them, and as nobody's ever written it down, was to be the leader of the committee as the committee undertook to do the task of redistricting. We saw our responsibilities as being those who could come forward originally with what's known as a base plan, which was a beginning point, to say to the other members of the legislature that here's a starting point, bring your ideas forward as we attempt to get a plan which we can accept.

We called our first or second meeting, as I say, we were three weeks behind. The Senate — and the Senate has already had a schedule by which they were going to conduct public hearings. We then sent out a schedule by which we would have public hearings across the State of North Carolina. And I believe there were at least nine or ten public hearings that were across the State from the [664] eastern part to the western part.

Q. Representative Fitch, I want to get back to the public hearings in just a minute, but let me ask you this. The legislature was not just involved, as I understand it, with congressional redistricting, but also involved with State House and State Senate?

A. And any local pieces of redistricting that may come through.

Q. Did you participate in the State House and State Senate redistricting?

A. I'm not sure if it's a law, but it's at least an unwritten rule the House will redistrict itself and the Senate will redistrict itself, even though we're bi-body and each plan has to be — the actual working on the House plan is done by the House, and the actual working on the Senate plan is done by the Senate.

Q. Would you contrast for the court the differences that you observed between State House and State Senate redistricting on the one hand, and Congressional redistricting on the other?

A. Well, there are more people, there are different people than what we dealt with in the House plans. There's more area, more people, to some degree, attempting to talk to you about what they would want.

Q. Is the relationship different between the Senate and [665] the House in Congressional redistricting and House redistricting, for example?

A. Yes. To a degree it's an adversarial type relationship, at least immediately. When we were appointed, I spoke to my Co-chairs and told them it would be nice if we took a walk across the other side of the building to talk to the Senate Co-chairs about what we might think about that part that we were going to do, at least together.

And when we walked over to see Senator Winner and Senator Walker and Senator Johnson, they informed us the decision had already been made, and that they had gone to Washington and met with the Congressional delegation, both Democrat and Republican, and informed them there would be no minority districts in the state of North Carolina.

And we asked them whether or not they were still the House of Lords and the House of Commons had to follow them, that our idea was that there ought to be at least two minority districts in the State of North Carolina. And them being at the number zero and us being at the number two, brought about a compromise that there would be one that would be done in North Carolina.

Q. Representative Fitch, you mentioned public hearings a moment ago. Representative Fitch, I'd like to show you Exhibit 200, Stipulation Exhibit 200, which is Volume One [666] of the legislative history, and I'd like to refer you to pages 1, 2 and 3 of that 1400-page document and ask you whether that contains the notice of the public hearings at the House and the — House and Senate held.

If I may stand here, your Honor, I have one other thing I need to do.

Judge Phillips: Sure.

A. No, sir, it does not. It does not contain the notice of hearings of both the House and the Senate. It does, in fact, contain the notice of hearings for the House.

Q. Thank you very much, Representative Fitch, for correcting that. Representative Fitch, I would like to refer you specifically to page 2 and 3 and ask you whether or not that one of the matters of particular interest to the committee was the creation of communities of interest?

Mr. Farr: Objection.

Judge Phillips: Overruled.

A. Could you repeat the question?

Q. Yes. Let me approach the witness, your Honor, again. My question, Representative Fitch, relates to the portion on page 2 that says, of particular interest to the communities are the public's ideas concerning communi-

ties of interest appearing at the top of page 3; is that correct?

A. Yes, sir, that's absolutely correct. And that was [667] one of the reasons why we attempted to go across the State to at least ten different places to hear what the public had to say because we did, in fact, want to know.

Q. Why did you all want to hear from the public?

A. Well, the first thing that I thought and that my Co-chairs agreed to is that —

Mr. Farr: Your Honor —

A. We were not redistricting places, but were redistricting people, and that the only way that you knew what people were thinking or contemplating would be that you would go to the people. There are a lot of people who serve in Raleigh and other places that think that folks ought to always come to the seat of government.

I was real adamant with the House folks, we ought to go out to the public to hear what the public had to say. And realizing that we were redistricting people, I was very much willing to get out to see what folks had to say.

Mr. Farr: Excuse me. I should have stated, I would like to state an objection for the record to Representative Fitch's testimony to the extent he's testifying as to what other legislators said on the grounds of hearsay. Would ask that be recognized as a continued objection.

Judge Phillips: We'll receive it and some of it that I have heard is not offered to prove the truth of [668] what's asserted. Some of it may or may not come in under some other, but we'll consider it all subject to hearsay objection.

Mr. Farr: Thank you very much, your Honor.

By Mr. Speas:

Q. Now, Representative Fitch, were you here during the testimony of Gerry Cohen, or some of it anyway?

Q. Yes, sir.

Q. Representative Fitch, Mr. Cohen, as you may recall, was asked about some criteria that the House and Senate committees jointly adopted and I'd like to ask you whether or not your committee adopted any criteria concerning following county lines?

A. No, sir, I don't believe we did.

Q. Could you tell us, at least from your perspective, from your perspective, was that important or not important?

A. To me it was not important. It was not important purely, again, because I looked at redistricting as people and not places. I was aware that there had been a matter that had been litigated that indicated that you could, in fact, split lines when originally I think an old North Carolina case said that you could not; that now you could. And so, no, it wasn't — county lines didn't mean anything to me as we were drawing.

[669] Q. Did you see any advantages, in fact, from dividing a county into two districts?

A. Yes, sir, I did. As I indicated to my folks back in Wilson that, in my opinion, it's a better form of government. That with the division, instead of having one person that you can't stand, you have two people that maybe you can talk to, and that when a county is divided, two representatives represent an area, to me, is better government than one person representing an area.

Q. Representative Fitch, did politics play any part in this?

A. Did what?

Q. Did politics play any part in this process?

A. Yes, sir. Politics was what was and what is that redistricting is all about. I'd never been so popular until I chaired redistricting, both from a Democratic and Republican standpoint.

Sam Hunt, Ed Bowen and myself, everybody knew exactly who we were. And Democrats would come in and talk to you about an issue and then leave, and Republicans would come in and talk to you about an issue. And some Republicans would send other Republicans to figure out, put pieces together so that they had a good idea what an area looked like.

And yeah, politics was everything from a trading [670] standpoint. Everything that I ever heard that politics is or was from my undergraduate training at North Carolina Central in political science is nothing like seeing it working in a redistricting situation. I watched grown men cry and plead not move a line because, if so, they may couldn't get elected or, if you move this block, blacks who had been very good to them in the past no longer would be in their district.

Yes, sir, politics is everything, in my opinion, in redistricting.

Q. And were any compromises made in this process?

Mr. Farr: Objection.

Judge Phillips: Overruled.

Q. Was compromise a part of this process, from your perspective?

A. Just as politics is interwoven into redistricting, compromise is the mother of that. The very — as I indicated earlier, when the co-chairmen got together for a meeting other than to say hello and congratulations on being selected and nominated and placed in as chairman, compromise started right then. Because the Senate had said there would be no minority districts, I had thought,

and my co-chairs thought, there ought to be two minority districts. We started off on the core of compromise and that was to compromise from two to one.

[671] Q. So you personally supported the creation of two majority minority districts from early on?

A. Yes, sir, and I thought that the State of North Carolina had a compelling interest, in my own opinion, to address past discrimination of left out and locked out blacks who had participated in the electoral process.

Q. And I take it you found, during the first session, you weren't able to achieve your goal of two districts?

A. No, sir, I wasn't. With the compromise, I moved forward with one, but I said, and the co-chairs said, throughout the process, that we'll do the job that is before us; that we can get 61 votes on the House side, that we get 26 votes for on the Senate side, and that's what we'll do as elected officials.

And since our plan has to go to Washington, D.C. to the Justice Department, that the Justice Department, we will pray and hope they would do their job. And if they did their job in the fashion I thought they would do, they would reject the first plan and send it back and instruct us to do a second. And that's exactly what they did.

Q. Representative Fitch, in addition to having to compromise your own views about two majority minority districts, can you give us, the Court, some examples of other compromises that had been made in the creation of these districts?

[672] A. Well —

Q. In particular, concerning changing of lines, Representative Fitch?

A. Well, we changed lines where it could be broad line going though, in Chapter 7, going though Wayne

County to accommodate and to help Martin Lancaster. In Chapter 6, we attempted to get some Republican support, more particularly from Representative Coy Privette, and we put a party, and called it Privette Divot. And when we didn't get the support, we withdrew the Privette Divot. And I don't believe we put it in Chapter 7 because we understood that Representative Privette was interested in running for Congress and that was a little section that he was interested in. So we divoted it and put it into the district.

With the creation of the 12th District, in helping congressman seated with the 11th, there was a Republican congressman there. I think compromise was all about it.

There were things that we could have done and could have done them a lot differently, and we didn't. As Mr. Cohen indicated on the stand, he was instructed in no way not to screw any Republicans. Well, I'm the one who told him not to do that. That I had been, in my opinion, I had been discriminated against all of my life and I wasn't intentionally trying to do it to anybody else, [673] regardless of what their label was. But I was going to play the game of politics as we did it and as I understood the role redistricting takes on.

Q. Representative Fitch, let me go back just a minute into the first session that adopted Chapter 601. You indicated that you personally wanted two majority minority districts then.

Were there some plans introduced during that first session in the spring of '91 that would have created two majority minority districts?

A. Yes, sir. I think that there were. I believe that Representative Justus introduced a plan. I believe that even Representative Balmer, and I'm not sure if Representative Flaherty.

Q. Did you support those plans, Representative Fitch?

A. No, sir, I did not. Those plans were introduced by three Republicans and it was my view that the Republicans had a different agenda than what I had. That while they may create some minority districts or some black districts, their creation and their methods of drawing the lines was also to aid Republicans in getting a larger percentage of the congressional delegation than what they presently had. I attempted to stay away from those drawings.

As a matter of fact, I believe when I went back at [674] one point in time looking at it on a purely partisan basis, the Republicans would have been better off with Chapter 600, Chapter 6 than they were with Chapter 7 because there was an opportunity where they have four now. There was an opportunity, based on the configurations, to possibly have picked up a different one.

And we kind of felt, at least I felt, that they would sweep that and race the sand purely because we didn't take in their suggestions and take it in and raise a stink and we will be able to come in again.

Q. Did Republican legislators go to Washington and lobby against the State's plan?

A. I don't know that for a fact but I heard it was done.

Q. In any event, the Department of Justice turned down the State's plan in December of 1991?

A. Yes.

Q. Now, Representative Fitch, there's been testimony here about whether or not the State should have gone to court to challenge the Department of Justice decision.

Would you tell the court about what your view about that issue was?

A. My view was that I was in the catbird seat. That was exactly what I wanted, was two districts. That we

had an opportunity to now do two districts. As I had participated in and was participating in any leadership [675] meetings on the House side. I advocated that we not.

Some had sought to determine whether or not going to the District Court, whether or not there would be a higher standard of burden for the State to have to carry in trying to overrule. The final analysis was that we would not go in and fight to have review from the District Court.

Q. To your knowledge, to what extent was the timing of the election process considered?

A. The upcoming election was close at hand. The filing period; it was time for the filing to open. That was a consideration that North Carolina, with a 12th seat and new seat that we had never had before, arguing about the business of drawing faster than what we could litigate and go ahead on and have an election with a 12th congressperson to be seated.

Q. Representative Fitch, sometime after the Department of Justice, or within some time the Department of Justice rejected the State's request for preclearance, did you see a redistricting plan that appealed to you?

A. Well, I was looking back through a whole lot of things about that time. And having a conversation with folks, the so-called Peeler plan that you've talked about, I think, first originated with me.

I talked to one John Merritt about that so-called [676] Peeler Plan. And then that plan then seemingly went to Tommy Hardaway, and to some other people, and then it came back. And then it was the Peeler plan; but I had seen Representative Balmer, I believe it was Representative Balmer, Charlotte to Durham, that did, in fact, interest me.

Q. Excuse me, go ahead.

A. In Chapter 6, Durham was pretty much put in for numbers and convenience.

Q. Let me clear up one thing. You are talking now about the first enacted plan that included Durham in the majority minority district?

A. Yes, sir, Durham was originally in Chapter 601.

Q. Yeah. What appealed to you about the Peeler plan or the Balmer Plan; what caught your eye?

A. Durham was not in the 1st Congressional District.

Q. And what appealed to you about not having Durham in the 1st Congressional District?

A. Well, I had been in a congressional district with Durham County for ten plus odd years, and the numbers of Durham were overbearing on all us country folks down east. That we always had to suck up to their ways, purely because they had the votes and the numbers.

And while I put Durham in originally, I wanted to take Durham out. And it wasn't just me, it was, as I [677] moved in eastern North Carolina, people used to say, or would say, take Durham County out, they've been in with us long enough and we ought to have an opportunity to elect one of us from the east and not be some representative from Durham who doesn't quite understand the way we live in eastern North Carolina.

Q. I take it, Representative Fitch, you think there's some difference between Durham and eastern North Carolina?

A. Yes, sir, I definitely do. I don't think that all black folks are the same. I don't think they all think alike. And I don't think they all look alike. I don't think they all act alike. There's a difference between a black in Durham and a black in Warren County or a black in Wilson County.

tricts that were drawn. And what that has done is that has strung that district about two thirds of the state clear across the top — from Durham almost up into the mountains and over the mountains and up and over the mountains several times which would be almost impossible for the constituents to be served in any manner and in that area it would be. . . . Why wasn't it drawn when it is possible for compactness so that somebody can service those people? It's kinda like that what usually happens in something like that is the mountain counties kinda get left out and they are served by somebody that lives clear across the state and I just don't think it's right for those counties when we can draw something that is much more compact.

Chairman Fitch: The chairman was told—I guess I can answer your question this way—the chairman was told that we would be back into session on Wednesday, that the committee would meet today. We have come forth with a plan as a start. That plan is before you at this time.

Rep. Oldham: Mr. Chairman, after receiving the plan over the weekend, I met with a number of constituents in Forsyth County who expressed some concern about this plan. We feel [9] as though it unnecessarily weakens the Black influence in the selection of Congressional representatives. They feel as though it was a reconfiguration of the precincts and wards involved that we could get the job done and not unnecessarily weaken the influence. There are some suggestions. We have looked at some figures and we feel as though by including different parts of the 66th and 67th District that we can maximize the influence of the Blacks in that area. And we would suggest that . . . and I have those here . . . and I can talk with the folks later on but it is the same districts and whatnot; it's just a redrawing and a reconfiguring different ones and putting them into—some out of the Twelfth and putting them . . . and pulling some

and putting them in the Twelfth. And we don't feel it would hurt either of the two—well in fact, it would enhance our influence in the Fifth District but it would not hurt the Twelfth District at all.

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[10] Rep. Wilson: If you are taking suggestions, I would suggest that when you go back to trying to make those adjustments that you do look at. . . . I didn't get an answer on the 5th District but I am sure you are thinking on those things and if you would at least take that into consideration and try to make districts anywhere that you can that are compact so that the constituents in that district will be able to be served readily. I think that is very important when we are going to do something. I know that we cannot always do that when we have to draw those minority districts. After that's done when we do all the other districts I think it is extremely important that we try to do that and it obviously wasn't done in a lot of those areas. So I think we really need to go back and look at that and try to get those areas so that there are areas that can be served geographically and also in areas that are compact so that whoever represents them can at least do a half decent job in helping those people.

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[12] Rep. Green: Back in 1980, I wrote a letter to a good number of my friends that if we are not careful that the three branches of the Federal Government—Administrative, Legislative and the Judicial—will be in the hands of a non-democratic party. That almost came into fruition. We saw the courts system in this great nation put into the hands of the conservatives all the way down from the Supreme Court almost to the County courts. The same thing happened in the administrative unit and the only vestige of balance that this great state and country

of ours has is the fact that we have had some representation in Congress that has given us a voice. And so, we've not ask[ed] all these little questions. It's pretty obvious what we are trying to do. We are trying to balance our government. We are trying to give one part at least significant representation in one of those three tripods. We have lost the court system in the Judiciary as far as Democrats for the next 35 years. If we don't make some changes in the way we are going, we might lose Administrative for another 10 or 15 years. And so where are we going to be if we don't have some representation in Congress? So let's be fair and let's understand that we are working in this great country, we are citizens together and we want representation. We wouldn't have to worry about all these snakes if we just take the areas and see that we get representatives from all parts of the county. You know, (inaudible name) doesn't want to have to drive all the way down 85. He'd rather be in Durham, Vance County and Warren County if they would elect him. He tried that—2nd Congressional District—to Warren, then he was smacked down through the voting system. So what I am saying in principle [13] is it is clear what is happening and this is the last opportunity that we have to have some representation in this Democratic government that we have and so let's give and take. Give us a break.

Chairman Fitch: Rep. Decker.

Rep. Decker: Mr. Chairman, I would like to make a request since the staff is going to do some switching in the Tenth District, I would like to formally make this request to staff to take that portion of Forsyth County—you can do that for me only—and bring forth an amendment for me to take that portion of the 10th District that is in Forsyth County or you might say that backward—that portion of Forsyth County that has been put in the 10th District by the committee map that has been distributed to us and put that back in the 5th Dis-

trict and make an appropriate addition to the 10th District from that portion of the 5th District that is over just east of McDowell County and taking that little gooseneck out. Can staff have that ready for me by tomorrow? Can we get a comment on that?

Mr. Cohen: We could have an amendment to this plan to change those precincts in Forsyth—are you talking about like going down to Burke County?

Rep. Decker: There is a gooseneck that goes down through there and ends just east of McDowell County and is part of the 5th District. And just take that gooseneck out and have the western counties of Forsyth County back into the 5th District. I think it is very unfortunate to split Forsyth County three ways and I would like to not see that done to any county. I think this map has a finger of land in the 11th District stretching east nearly to Gaston County. I think that needs to be taken out because you've got a like finger of land in the 10th District stretching west into the 11th. Those really violate the sense of compactness and community and also that finger of the 5th District stretching down into the 10th. There seems no rhyme or reason when you['re] doing that that makes good common sense to the people of the State of North Carolina. As a matter of fact, this little map—I colored it the best I could—looks like zoo art like some animals at the zoo just threw some paint up against the wall and that is just where it landed. It doesn't have a whole lot of good common sense to it and I would like to see staff put Forsyth back whole and that is what I am asking.

Mr. Cohen: Also to take the 12th District out of Forsyth County as well or just the 10th? We will do whatever amendment you want. Earlier you said. . . .

Rep. Decker: The amendment I would like to see is the one I previously stated that you take that portion of the 10th District that lies within Forsyth County and put

that in the [14] 5th District. You understand? You following me? And you can take that section of the 5th District that stretches into the 10th down into the gooseneck—do you see the gooseneck?

Mr. Cohen: Mr. Decker, I understand. . . . The follow-up question where you said make Forsyth whole and the 12th District under this plan goes into Forsyth as well. I was asking whether you meant reduce it from three districts to two or to one.

Rep. Decker: Well, I'll stay as realistic as I can in the political arena. I think it pretty well. . . .

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[14] Rep. Warner: Mr. Chairman, I know that all (inaudible words). To be perfectly honest, I have not had any negative input from the folks back home on what has been given here. The only thing that concerns me is that generally the public reacts after we put something into the wheels of motion here and I certainly don't want to move so quickly when I look at [15] Robeson and Cumberland Counties and we appear to have a doughnut hole in that particular area that you have to hop over and then bounce in the same district line. I would like to see some serious consideration if at all possible. Gerry, if it's possible, coming in with the 8th District where that comes into the western part of Cumberland County connecting into the 17th House District which is where we would especially get minority voting strength. I know you might just jumble your numbers and percentages off but in that way it would leave a great majority of the Cumberland area at least in a better compact area, so to speak.

Mr. Cohen: So your suggestion was to take most of the voters of the 17th House District that is the minority. . . . Your request is that we take the 17th House District most of the voters of which are in the 1st

Congressional District in this plan and instead put in the 8th?

Rep. Warner: If that's possible and the reason for that is no other reason other than geographic. If we take the southwest part of Cumberland itself and we have a Congressman in that area and then stepping over we hit another Congressman and stepping over again we went back to the same Congressman we had before.

Mr. Cohen: Let me ask you one follow-up question so we can follow your instructions after the meeting. If we take that Black concentration out of the 1st District to replace that if you will get with us as to your preference of what area to put back into the 1st.

Rep. Warner: Let me make sure I clarify that. It makes no difference to me. I am not looking at minority or majority numbers at all. What I am looking for is the proximity that people can identify as to what Congressman is what area. It makes no difference to me. I certainly don't want it to be a racial thing at all.

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HOUSE CONGRESSIONAL REDISTRICTING COMMITTEE

January 22, 1992

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[4] Rep. Fitch: Mr. Justus, you talk about your plan does not have an I85 District. Then you compare and distinguish the difference between your I85 District and the proposed plan sent forth by the Chairman and your plan from Charlotte to Wake County

Rep. Justus: Yes, Sir.

Rep. Fitch: and talk about the rest stops along whatever road you have there whereby you would be able to accommodate the vote.

Rep. Justus: You'll notice the map. The district is first of all more compact. It's a wider district. Probably wouldn't be too many rest stops along that way. And, I think on balance again in meeting the criteria of the Committee that this is a much more compact plan, would still provide 2 minority districts. It is more orderly and this just has a variety, that it's better in my opinion, Chairman Fitch, than the plan, proposed plan, that the Committee is looking at.

Rep. Fitch: Mr. Chairman, I think I need to correct a statement made by Rep. Justus. I don't believe that compactness was one of the criteria adopted by this Committee. I don't believe that it was. But, a follow up question. In your district 6, you made the assumption that Rep. Balmer made in his plan from Charlotte to New Hanover that Indians and Blacks would make a minority district, is that correct?

[5] Rep. Justus: I used the Indians to make up a minority district. But, I would remind you that the Voting Rights Act refers to minorities not a minority. And, I don't think we can go into all minorities. I think the disabled are a minority. The women are a minority. You can't possibly include all of those different catego-

ries. So, since the Voting Rights Act refers to a minority or minorities, excuse me, I took that they meant by combining the minorities that would be sufficient.

Rep. Fitch: So, again you just hooked minorities to minorities in order to say that you now have a conglomerate minority district in order to say you have satisfied the Voting Rights Act?

Rep. Justus: I would say that is somewhat correct, yes.

Rep. Diamont: Mr. Chairman.

Rep. Hunt: Rep. Diamont.

Rep. Diamont: Mr. Chairman, a question for Rep. Justus, please on the plan. Yesterday we were told that the percent Black voter registration was one of the most important criteria. That under the original plan we sent to Justice that they sent back to us that it was 51.13% for the first district. And, yesterday's plan first District had 52.08% and the 12th District had 55.53%. What is the percent of Black voter registration for Districts 2 and 6 and does that fall in the area that the Justice Department will approve?

Rep. Justus: You remember yesterday that I asked some questions of Miss Winner in trying to determine what did fall into the parameters both in lower limits and both upper limits. And, you may remember that what we finally decided was, it depends. I think was the answer that I finally got. In talking about the figures in District 2 it is higher than 51.13% because there were computer errors as Mr. Cohen first (inaudible.) And, there were minorities that were not counted into that figure. So, the figuring is closer Bill, than 52% in actuality in minorities.

Bill Gilkeson: I would have to check that.

Rep. Justus: Would you, please.

Rep. Diamont: In District 6 the percent of Black voter registration in District 6 would be what?

Rep. Justus: It is 40.11% here plus the adjustment.

[6] Rep. Diamont: May I ask a question, please, Mr. Chairman, of Staff? Is there any legal case or decision that specifically said that you can or cannot put more than one minority together to equal [a] minority district? I'm sure there are other states such as Texas that have several different minorities or is there any kind of definite answer to the question?

Leslie Winner: There is a standard on lots of cases on that very question. The standard is in order to count two different racial minorities as minorities in establishing a district you must be able to demonstrate those two racial minorities both in a manner that is cohesive. And, what that means, you must be able to demonstrate that they both routinely support the same candidate.

Rep. Diamont: Can you prove that in North Carolina these minorities vote on a cohesive pattern and support the same candidate?

Winner: Our examination of the election returns for Robeson County which is really the only place that you have enough majority Native Americans precincts to figure it out is that they do not tend to vote for the same candidate.

Rep. Diamont: So, therefore the election results in North Carolina would not justify putting the two groups together.

Winner: I don't like to speak for the Chairman but, I think one of the reasons is the Chairman chose to use a second minority district that was not I85 instead of a minority district that ran across the southern edge of the state is because you don't have to rely on Blacks and Native Americans voting together to get a majority/minority district. On the I85 grouping you do have to rely on the southern route.

Rep. Justus: I might say in reference to that we seem to forget that the Native Americans were the original minority in this country. And, we never quite seem to include them in the things that we include others into.

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[6] Rep. Justus: I haven't, I haven't seen that the Indians don't vote, the Blacks. As a matter of fact in looking at the election figures that are established throughout this process, I haven't seen the Whites voting against the Blacks. There are areas that are overwhelmingly White in registration. Harvey Gantt got more than 60% sometime 70% of the vote. I don't think that is a factor we ought to consider. I think we ought to do what the Voting Rights Act called for and create a minority district with the opportunity for a minority to win. In my hometown of Hendersonville, we don't have but about 4% minority. Yet, we [7] elected a Black vice mayor and I think that is the way it should be. We have elected other people that are minorities. In areas where there are great majorities of one group of Caucasians, one group of Blacks or whatever happens to come along. Are there further questions?

Rep. Hunt: Representative Michaux.

Rep. Michaux: Representative Justus, you have mentioned the fact that the I85 corridor that anybody who was elected as a Congressman would be limited in terms of budget and what not for setting up offices. Two, two, two questions, well two things I want to put in your mind about that is I think we got two Senators who cover the entire State and they are limited in what they can do. But, I think they do a pretty good job of constituents' services is number one. Well at least one of them does. Then . . .

Rep. Justus: I agree with you

Rep. Michaux: Then the fact of the matter is any individual who runs in any is going to serve his constitu-

ency or their, wherever their office happens to be. They don't have an office in every little, in you know, in every town and hamlet. There are ways they can get to their constituency and serve them just as well as they could, fact of the matter is one office in a district wherever that district is or however it runs and still serve as your full constituency without that. I don't think that. I think what you were stating there is rather spurious rather than really you know looking at the situation. I don't think any Congressman is going to ignore any part (inaudible) what his budget may be or whatever. So, with two Senators covering the constituency in this State I think that argument falters a little bit.

Rep. Justus: There is one thing, may I answer this question?

Rep. Hunt: Go ahead.

Rep. Justus: There is one thing I think you failed to consider, Representative Michaux. A Senator has two to three times the money that a Congressman has. And, therefore can afford to cover those large areas. And, the second thing is it's a personal thing with me and I talked with some Congressmen who feel the same way. They kind of feel as I do that no constituency should be more than a 30 minute driving time from a Congressional Office. In this day of modern technology they ought to at least be able to get their problems taken care of.

Rep. Michaux: That raises a further question. Number one, the Senator has four to five more constituents to cover also. Rather than—but be that as it may. If a prudent Congressman, [8] a prudent Congressman can set up offices where his constituency will be available. If it is not set up in that manner that Congressman can do other things in order to bring that constituency, in order for him to get to his constituency. I mean, you know, Representative Justus, we want to meet, you know we want to meet the people and we make it available. We

make ourselves available as State Representatives, some of us, to meet the people. So, here again it's there is [sic] so many different ways that can be done.

Rep. Hunt: Rep. Redwine had a question.

Rep. Redwine: Yes, Rep. Justus . . . two points, really. You mentioned that you split forty-five counties; did you split any counties more than three ways or three ways?

Rep. Justus: Yes I did.

Rep. Redwine: How many was that?

Rep. Justus: I think that was eight counties.

Rep. Redwine: Eight counties split three ways; did you split any four ways?

Rep. Justus: No.

Rep. Redwine: None four ways question of the Chair, now. The original plan that we sent to Justice did we split, what did we do on the issue of splitting counties and precincts?

Rep. Hunt: We will refer that to staff; I don't believe we split any three ways.

Mr. Gerry Cohen: There were no counties split three ways; there were a total of fourteen precincts split. I don't have a count here of how many counties were split two ways.

Rep. Redwine: One last question Rep. Justus, yesterday we listened to a number of folks, mostly if I remember correctly — Republicans, speak to the issue of commonality of interests in a number of these districts. I'd like to ask you to address the issue in the minority district that begins in Charlotte and swings through the rural Piedmont southeastern or south central part of North Carolina that eventually winds up in the urban area of Wake County, it looks like to me the city of Raleigh or somewhere closeby. Explain to me what your

response would be as to the issue of communality [sic] of interest in that district excluding the urban area of Wake County on the other.

[9] Rep. Justus: Well, Rep. Redwine, you do have Fayetteville tucked in there, and it is an urban and not quite agrarian district, but it's in between there somewhere. Its an area of small towns as I drive through it and I expect about half of the people have would have agrarian interests and half would probably have an urban interest. And I don't much know how we're going to put it together without getting some diversion in that issue.

Rep. Redwine: Rep. Justus, if you remember I think the 2nd District that is planned in the proposal that we heard yesterday from the Committee Chairs, at least the two districts in my mind that were formed minority/majority districts that were proposed in that, did have some communality [sic] of interest because the I-85 corridor obviously took in much more, would be a much more urban flavoring district than what you have proposed here. It looks like as you said a lot of it is very agrarian, very rural, and I am familiar with that part of the State. You are in fact correct. The other 'minority/majority district in the other proposed plan, the 1st District, obviously is a pretty rural area and would have, I would think, a fairly good communality [sic] of interest, but I can't see how you can tie this district, the 2nd proposed district here, and make it fit in any on the issue of communality [sic] of interest — at least in my mind — knowing the geography and the people in that area.

Rep. Justus: Certainly you would know that geography of people better than I and I would say to you there, if we think its better, it may be proven that it isn't. And we are sort of at an impasse. I'm going to stick to what I've said and I am certain that you have a credible argument and we will look into it.

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**CONGRESSIONAL REDISTRICTING
HOUSE FLOOR DEBATES**

January 23, 1992

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[3] Rep. Fitch: Thank you Mr. Speaker. House Bill 3 Committee Substitute. The Chairman Ed Bowen, Sam Hunt and myself presented to the committee Base 9 Bill to be considered. That Bill was substantially what you received through the Bill last week. The Bill now carries the number Congressional Base 10. As you know the Federal Government rejected the plan which this body ratified in July saying that we could have and should have created a second majority minority congressional district. The purpose of this proposal is to meet the requirements of the federal government by enacting a redistricting plan that has two majority minority districts in population. The plan we presented is similar in most regards to the plan which was mailed to you over the weekend. Let me however, review for you, some of the important features.

First of all we feel that this plan meets the one man, one vote requirement, a perfect population equality. Each district has a population deviation of either one person or zero people thus the state will not be subject to court challenge on this particular basis. Secondly the plan goes beyond what we considered to be the requirements of the Voting Rights Act by creating two minority districts. District 1 is 57.26 percent black in population and 53.4 percent black in voter age population. District 12 is 56.63 percent black in population and 53.34 percent black in voter age population. Harvey Gantt won each of these districts by a substantial majority. In your packs you have the actual accurate voter registration percentages found on the first page within the bottom of the second paragraph within your data package which also includes your maps. We believe that these districts give black citizens of this state a realistic opportunity to elect

Congressmen or Congresspersons of their choosing. Although these majority black districts are spread out they have a commonalty of characteristics. District 1 in the Eastern part of North Carolina is largely rural in character. Only 18 percent of its population lives in cities of 20,000 or more. In contrast District 12 which runs from Gastonia through Charlotte to Winston-Salem to Greensboro and to Durham is urban in character. Eighty percent of its population lives in cities of 20,000 or more. In addition to the two majority black districts, there are four more districts, districts number 2, 3, 4 and 8 that have a population percentage of over 20 in black population. This will give black citizens of these districts a substantial opportunity to influence the Congressperson elected from those districts. We believe that our approach is superior to the one suggested by the Federal Government. The Justice Department suggested a second district running from Charlotte to Wilmington. Such a district does not have the commonalty of characteristics providing people of Charlotte and Wilmington in [4] their urban needs with people of Anson and Bladen counties which are rural and have rural needs. In addition such a district would provide minority representation only if black and native American voters voted together and the voting record does not establish that they have or will do just that. Thus we expect that our plan will work better for black[s] than would the approach suggested by the Bush Administration.

I will not go over in detail the composition of each District. Your statistical package contains a map of each. I will point to you the maps of District 9 and 10 which have been modified substantially since you received the plan over the weekend. We have made each more compact in response to the concerns that were raised by many of you. In addition we have concerns that were raised by many of you. In addition we have returned all of Congressman Ballenger's home county to the 10th District. We also made changes to the 2nd and

4th Districts which enabled us to make Franklin, Johnston and Chatham counties whole. I have heard many concerns about the number of counties that are divided in this plan and I would like to respond to those concerns. This body enacted a Congressional Redistricting Plan in July which divided no county into more than two parts. The Justice Department through its rejection did not want that type of a plan. Representative Balmer has introduced four congressional redistricting bills. Each of those divide a substantial number of counties into three district[s]. Indeed one of his plans divided ten counties into three districts and one into four districts. Representative Justus presented a plan to the committee and Representative Flaherty presented a plan to the committee which also divided many counties into three districts. The plan we propose keeps 57 counties whole, divides 36 into two districts and divides 9 counties into three. Those of you who object to our division of these counties should have been urging the Bush administration to accept the body's congressional redistricting plan as it was originally enacted.

Finally, we think that this plan is fair on a partisan basis. We believe that it creates four districts including two majority black districts that are likely to elect Democrats, Districts 1, 4, 7 and 12; three that are likely to elect Republicans, Districts 6, 9 and 10 and five that could go either way. We have tried to meet the dictates of the Justice Department, the needs of the minority community of this state and the concerns raised by many of you that we have heard as we have moved throughout the process. The plan that is before you now, Base 10, as I indicated, is not the same plan and is not the identical plan that came to you this morning. There is an engrossed bill that was an amendment offered by Representative Jones, other than that the plan is as you saw it this morning. We would urge your support for the plan. Thank you.

[5] Rep. Flaherty: Thank you Mr. Speaker. The first thing I would like to point [out] is that I don't agree with and I know that the courts have interpreted it this way, but I don't agree with the court's interpretation of the one man, one vote rule. I think it's a little bit ridiculous when you take into consideration that people are born and die every day that the ideal population for the Congressmen in this state are going to be different from the ideal population for Congressmen in other states that you have to cut up political, governmental bodies to get to that point. However, my plan does not do that at this time. It could, however, staff has not had a chance to bring it down to 0 or 1 variation. They have assured me they could do that if given the time but I would still ask that consideration of this plan be given. It does do something that the plan that the Committee Chairmen have submitted does not and that is it addresses the Southeast region of the state which was specifically pointed out in the Justice Department's letter. This plan would have two majority minority districts. It would have a much more compact majority minority district than the Northeast which in my plan would be District 2 and would have black voter registration of 53.15 percent. In District 12 which is basically the I-85 district there would be basically 53.70 percent black voter registration in the numbers figured by staff to take into consideration the problems they had with various counties. Now it indicates on here that District 12 is 53.49 but I do have a memo from Gerry Cohen which says it is realistically more like 53.70. In the District 7 which would be an influence district it would have more accurately 43 percent black voter registration and about 10 percent native Americans.

The way that I came up with this plan, Mr. Speaker and ladies and gentlemen of the House, I was sitting up there in the public hearing and I heard at least two speakers indicate that we should look at a district in the Northeast, consider the I-85 district and also make an

influence district in the Southeast [6] with at least 35 percent black voter registration and 8 percent American Indian registration. This plan when I asked staff to go ahead and try to draw this up they came up with it and its got over 50 percent in the influence district which would actually make it possible to elect three minority members of the United States Congress from this state. There is no other plan that I have seen that could realistically do that and I would ask you to seriously consider this plan. It does not submerge blacks, it does not separate blacks, it tries to fragment blacks, it tries to treat all the black[s] across the state the same and it would give the Native American population in District 7 an actual swing vote. Now all three of three districts as Representative Fitch said with respect to his plan or the Chairman's plan were carried substantially by Harvey Gantt. So I don't think there'd be any problem in electing a black Congressman to these three districts. The only other criteria that I asked staff to consider was to put Mitchell in Avery County in the far west together with Yancey County. I was up there as recently as Saturday and they all assured me that they wanted to stay in the far west, that they all wanted to stay together with Yancey. Any of you that may be familiar with that area knows that there are several things that those three counties are working in cooperation with; the library, the AMY up there which stands for Avery, Mitchell and Yancey. There is the community college up there, Maylon Community Technical College which is Mitchell, Avery, Yancey. It does not split those three counties so basically what I did was I asked for basically two districts that were in the NAACP plan or the Charlie Rose or the second merit [sic] plan or whatever you want to call it and do exactly what we were asked to do at the public hearing and also address the issues that were given to me by the people back home.

With respect to partisanship I didn't ask that any Republican districts be made, that any Democrat districts

be made or as you do in the Chairman's plan, that you go into the heart of Caldwell County and take a county which has all precincts that the registration is majority Democrat, you go into Caldwell County and take those precincts out that vote more Democrat than the other precincts to try and protect what I believe is trying to protect an incumbent Congressman from Winston-Salem. I didn't ask for any of that. Now several people have told me well how many Republican Congressmen would this bill elect? I don't know. I would hope we would be competitive in all districts. At some point I hope we would be competitive in all 12. However, if you look at the registration, the registration Democrat to Republican is over 50 percent Democrat in every district but one and in that one district the registration is 49.62 Democrat to 42.59 Republican so that should still be a Democrat district assuming that an individual ran that his party would not desert. But in any case I've also been told that some people consider this an all minority plan, I don't know. It would elect blacks and Republicans but, Mr. Speaker, I tried to address the questions raised at the public hearing. There is no hidden agenda for this bill, I just did what I thought was doing a good thing in asking them to be as [7] compact as possible, asking them not to care about incumbents, and just make as nice a plan, as clean a plan, and get the two majority minority districts and an influence district in the Southeast. This would affect almost every county that is subject to the Voting Rights Act. It would affect every county that is subject to the Gingles case. I would hope you would give this map serious consideration because I think it does do more along what the Justice Department could in black and white look at the Southeast than what the Chairman's plan does. I will be glad to yield to any questions. I move for adoption of the amendment.

Speaker Blue: The gentlemen [sic] moves for adoption of the amendment. For what purpose does the gentlemen [sic] from Wilson, Representative Fitch arise?

Rep. Fitch: To as[k] the gentleman a question.

Rep. Flaherty: I yield.

Speaker Blue: He yields.

Rep. Fitch: Representative Flaherty, during committee debate did you not indicate that you had one criteria that you gave to staff and that was to keep your community whole?

Rep. Flaherty: I did. I said since I was running it that I hope they could keep Caldwell County whole. I did say that Sir. Yes, sir. Since I was running the bill, yes sir.

Rep. Fitch: Another question.

Speaker Blue: Does the gentleman yield?

Rep. Flaherty: I yield.

Speaker Blue: He yields.

Rep. Fitch: You were willing to split other people but you didn't want to be split yourself?

Rep. Flaherty: Well, no sir. But since I was running the bill I didn't think it was wise to split my county, didn't know that it would be necessary to split my county, if it was, if that has to be done, that have [sic] to be done. It may have to be done to get it down to 0 to 1 variation and if that's the case, then so be it. But I would also suggest that I would be open to suggestions with respect to changing the minority districts or changing any other districts. I would like if I had more time to try and get more counties whole in this plan because I think that's more appropriate than splitting the counties the way that we've done it. But this is the best it could be done in the time allotted.

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[8] Rep. Balmer: Thank you Mr. Speaker. I had resigned myself not to talk tonight because I was under the impression that we might be able to go home tonight but now that the Senate has gone home we will have to be

here tomorrow. Representative Fitch had a chance to poke fun at my four congressional plans and I can't resist the opportunity to discuss the congressional plan that he is bringing forth out of his committee. We stood here in July and I asserted that the plan that was being passed at the time would not pass the scrutiny of the U. S. Justice Department. I was at that time reasonably confident that the Justice Department would overturn it. To be honest with you, I wasn't sure. But I am sure that they're going to overturn this plan. Let me tell you why. First of all it does not create—you know, the part of the Justice Department opinion on Congressional Redistricting is very brief. It even boiled all down to one sentence in that letter. It said to create a minority congressional district in the Southcentral and Southeastern part of the state and this plan does not do that. It creates a minority district in another part of the state and the Justice Department may write back and say we appreciate you identifying a third congressional district that needs to be created but still go back and create the district that we said you need to create in the Southeastern and Southcentral part of the state. That's the first reason.

The second reason is just look at this map. That's probably the best reason. Just look at it. A lot of people when I first suggested the Charlotte to Wilmington district said to me, "You've got to be crazy. Look at that Charlotte to Wilmington district, look how spread out it is." And I thought I was going crazy too. But now, that Charlotte to Wilmington district looks like a very compact, well organized district compared to some of the other districts that are on this map before us. Another thing about this map that I cannot in good conscience not say and I say this in sincerity and from the heart but I really believe and from what I have been reading in the newspapers and from what I have been hearing this map was [9] not even drawn by the Democrat leadership in this legislature. It was drawn by Democratic Con-

gressmen in Washington. This legislature if that is true, has shirked the responsibility that the Constitution gives and that is for each state to divide its Congressmen however it wants too [sic]. So the Legislation [sic] should make these decisions, not the Democratic Congressmen. Now of course, nobody is ever going to be able to prove [sic] who drew the map but if you look at the map it seems to prove that. Look at the 1st District. First of all all the 1st District is too spread out. You can create a minority district in eastern North Carolina that is very compact. That's the one area of the state where you can make a compact minority district and it wasn't done. Why wasn't it done? Well, let's look at Wayne County, 37,044 blacks are in 4 precincts in a compact area in Wayne County. This legislation in its wisdom and in compliance with the Justice Department opinion made State House and State Senate districts in Wayne, Sampson and Duplin counties. This legislature last week said this has got to be done to comply with Justice Department opinion. In other words, this legislature said that the minorities in those counties need to be represented. Now how can we say as a Legislature that they need to be represented in the State House and need to be represented in the State Senate but they do not need to [be] represented in the Congressional maps. That's contradictory. Why was Sampson County and Wayne County kept whole? The name of one individual is the reason why, Martin Lancaster. The legislature, what about the 4th District? 38,000 blacks live in South Raleigh. What is unusual about the minority population in Wake County that is so different from minority populations in other areas of the state that have been put into the minority districts. The minority populations in Wake County are very accessible to either one of the two minority districts in this plan. They could have been put into either one of the minority districts. Why were they not? It's because Democrat Congressmen in Washington drew this map. David Price drew the 4th District. What about the

7th district. The 7th District is in the area of the state where the Justice Department said you need to create a second minority district. Almost all of Robeson County remains in the 7th District. Robeson County is 63 percent minority but it was not put into either Congressional district. Why was it not put in? The names of two individual Democrat Congressmen need to be mentioned now, Charlie Rose and Bill Hefner. There's were [sic] Robeson County is right now, instead of being put into either one of the minority districts, under this plan you would have to put it into the Eastern District, the plan that I introduced from Charlotte to Wilmington gave the blacks and Indians in the Southeastern part of the state representation in Congress. Under this plan the Democrat Congressmen in Washington have drawn the seats to protect themselves. What about the 8th District? It comes all the way to Cumberland County, comes into Charlie Rose's own home county to remove a number of Democratic precincts and moves them into the 8th District to protect Bill Hefner.

[10] But finally, well not finally, the 5th District, we're going to have a lot of names for that one eventually, but anyway the 5th District clearly is drawn to protect Democrat Steve Neale. I can't imagine anybody else besides maybe David Diamont who would have wanted to have it drawn that way. But I'm poking fun at David Diamont cause I don't think he wants to run for it. What about the 11th District? The 11th District was clearly drawn to eliminate Republican Congressman Charlie Taylor. All of ya'll are saying, "All this is nothing new, it's been going on hundreds of years". I know that but I think this map not only is going to be rejected by the Justice Department but I think this map right here is going to become the test case in the Federal Courts from the issue of partisan gerrymandering. And I think the Legislature is going down the wrong road if we want to become the case in the Federal Courts of an

example of partisan gerrymandering. And I respectfully request that you vote against the plan. Thank you very much.

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Rep. McLaughlin: Thank you Mr. Speaker. Ladies and Gentleman, I have been thinking about this quite a while and a real case of political reality is what we have here in this bill. I think anybody that knows anything about what we're doing here recognizes that. The Justice Department has forced the General Assembly to produce two minority Congressional districts. I think we all understand that. If you will argue I think that this wasn't a political move, I think everybody knows this was motivated by politics and politics alone. I thought and I still think it should be tested in the courts but somehow higher level has been decided we're not going to test it in the courts and I have nothing more to say about that. Now let us understand that each of these political moves on the political chessboard requires accountment [sic]. It [sic] time to about move when the Justice Department made their move then it's the position of the General Assembly to make their political move and we have done that with this bill. This is a political bill. I don't think anybody with any judgment at all would question that. Anyone can look at the map of this thing and know there is something wrong with it. I mean, you know it don't [sic] take a whole lot of intelligence to look at the map we've got here and know that thing don't [sic] make any sense. It's just common sense it don't [sic]. I have to claim I don't have a whole lot of education, all I can go on is common sense and I've got enough common sense to know that map don't [sic] look like anything. I think all of us understand that. I don't think that you can look anywhere in the country and find such a [11] disgraceful looking map in any Congressional setup in the country and I believe that's a fair statement. On the other hand you wonder well why in

the world we support such a map. Well you know, as I've said it[']s politics, it's nothing but politics and I think we have to accept that. I've had to find some way that I might be able to support it. I'm on the Congressional Committee and I felt like that somewhere along the way we've got to come up with some kind of compromise that we could go with and I agreed to go with it and I did it with all these things in mind knowing full well that I can't explain that map to anybody in my home town. I can't explain why Mecklenburg County, I can explain it but they're not going to be satisfied, why Mecklenburg County is going to be in three districts. But yet, it's a political reality and I'm willing to accept that.

And then I started trying to find some plus sides to it. Again on the minus side I'd have to say that Mecklenburg County and we all know about it twenty years ago was forced through the courts to integrate our schools. My people in my community and my family committed to integration. We put our hearts in it and we worked for it, not always because we were happy with it but because we thought it was the law of the land, and we still think it is the law of the law [sic] and we're still committed to it, it's an ongoing thing. You have to stay committed to it if it's going to amount to anything. We committed ourselves, our money and our children to that, and yet plan flies right in the face of it and I defy anybody to prove to me that it don't. This plan flies in the face of integration and integration of school systems that we [have] gone and spend [sic] so much in Mecklenburg County to commit to, this plan flies in the face of it. Now you say, well how in the world can you deal with such a thing and I've had a hard time dealing with it. I've actually lost sleep over it. I worried and concerned myself and was really ashamed of the plan we passed last summer because of such an ugly map. I voted for it but I was ashamed of the vote and still am. But again, I've had to vote for other things that I didn't really feel good about it and I still tried to find some way

that I could support it. And I have come up with a way. It may not suit anybody else but it's going to suit me. First, you have to decide if you're going to accept the premise that we have to have two minority congressional districts. Well, it seems from all I've seen and all that's happened here that this General Assembly has accepted that, whether I like it or not, whether it's factual or not, whether the courts will uphold it or not, the General Assembly has accepted it. That's another political reality.

So with that in mind, the present plan does make two districts, two minority districts that I think is as good as any I have seen. I've seen a good many of them, a lot of them have been awkward, some of them have one district that looked reasonably well, but the other one would be awful. So I think this is about as good as you can do with that and I think that's all right and I can live with those two districts. I think the 12th District at present looks better than the 1st District. I'm sorry that we have to put this crazy kind of thing on the public, again I don't have a lot of choice. I think we're going [12] to have to go with it or not and I don't see any possibility that we're going to go to court with it so I think we may have to go with it. But the fact of the matter is, it's all politics. And anybody knows it is. I've seen the trains on the track and I've been around here long enough to know that you either get on the train or get left at the station, so I'm going to get on the train. But I'm not a bit excited about it, and you know one of the reasons that I think I can get on board and again it's political reality, that this whole political process is that Mecklenburg County will now have the opportunity to have two Congressmen. We're going to have the opportunity to have two Congressmen from the County of Mecklenburg who actually lives [sic] there, a real good opportunity. So I think that might kinda turn me around and I can go home and maybe sell that and say you know it's a crazy thing but we can get two congressmen out of

[It]. Maybe it's all right, maybe we can live with it. But folks, again that's political reality. In politics you have to take a lot of things you don't want, so with all that in mind and another thing I'd like to mention to you is my home precinct that was sent out last weekend has now been split in two districts. This bill we got today, tonight, my home precinct is split in two districts. It wasn't that way last weekend. So you see things do go around and they come around. Folks, that's politics and if you don't like it you're in the wrong game because this is a political game. But anyway I have committed to this plan. I don't like it. Folks this plan stinks but I'm going to hold my nose and vote for it. Thank you.

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[14] Rep. Jeralds: Thank you Mr. Speaker, Ladies and Gentleman. When we look at this bill and in line I guess somewhat with what Representative McLaughlin stated, I'm reminded of a great African American Frederick Douglas that said sometime ago that power concedes nothing. And I think it was also said that we may not get everything we fight for but we're going to have to fight for everything we get. And it just seems strange that the members of the minority party in this matter would expect that the majority members would create additional seats so that they might gain additional power in this particular exercise. What's even more frightening is when we hear some subtle suggestions that they would appear to expect some help from the Justice Department or from the Federal Courts to assist them in this effort to gain additional power. We have seen instances in other parts of the country where the Justice Department and the Federal Courts have made a complete mockery out of the redistricting process. I'm reminded of just last week in Texas where the General Assembly passed a Senate plan that appeared to be pre-cleared by Justice only to have the three court Republican panel institute their own plan that would be more in favor of the

Republican party and when it was questioned as to some irregularities that took place, that being that Republican members helped to draw the plan and was seen even in the Federal Judges' offices helping with the plan and questioned, immediately the Federal Judges sealed the documents so that no one could even see what went into the plan. So I think that we have reason to be concerned when we see appointed officials, particularly when it is the Justice Department and members of the Federal benches that seem to be wanting to intercede to help other minority parties gain some kind of advantage in this process. It appears we have heard two or three times, we just heard Representative Balmer almost say unequivocally that we would expect to have the plan returned. We have heard other instances where it seems as if members of the minority party have some kind of inside door as to what's going to happen when we send a plan up.

. . . .

[15] Speaker Blue: He yields.

Rep. Creech: Isn't it the responsibility of and obligation of the Federal Courts and the Federal Judges to uphold the Federal law of this land — being the Voting Rights Act?

Rep. Jeralds: It certainly is.

Rep. Creech: Thank you.

Rep. Jeralds: There again it should be up to the Federal Courts to uphold the law [sic] but it's up to the elected body which is the General Assembly to draw plans that meet those laws. And I think it has been said on a number of occasions when we had previous Supreme Courts and in this particular case it was appealed to the Supreme Court in Texas and they refused to intervene. We have seen instances where we're told that, in a number of instances, courts were intended to interpret the law not write the law. And if that is the

case we should not have to put up with that as far as redistricting is concerned. I think that in the whole scenario that we are seeing in redistricting the minority party could in some ways take some kind of lesson from what African Americans have suffered as minorities being any such thing as an even playing field. And there isn't anything magic about time. The minority party has been around for over a hundred years and they still haven't gained any parity just as we as African American have been over here fighting for certain rights for a hundred years and you tell us that we should have gained parity by now. So it isn't anything magic about time. And I think that probably if you stay here for another fifty or sixty years probably the Republican party will still be a minority party. There isn't anything magic about having a few individuals that exceed such as Colin Powell or Secretary of Human Resources, Louis Sullivan, that means that the masses have gained any kind of statue [sic] just as you have the Governor and Lieutenant Governor and you still are the minority and haven't gained any statue [sic] in this fighting. So there isn't any such thing as an even playing field and it doesn't mean you're going to gain just because there's a matter of time. I think that we have to realize that as Representative McLaughlin stated this is a political process, power concedes nothing. It will appear that what the minority party is looking for is an affirmative action plan that they could put forward in order to gain some kind of parity in this redistricting process. And last of all it would appear that they expect us as the majority party to create some quotas. What they're looking for is a quota bill that would allow them to gain some additional seats just based on the fact that they're here. So I think that we need to approve this plan. If the Justice Department or if the Courts want to intervene as it appears that they are ready to do in order to promote the Republican causes, then so be it. But we should do our responsibility and approve the plan and send it forward.

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[28] Rep. Green: Mr. Speaker and ladies and gentlemen of the House, uh, I'd like to say that this amendment does two things in principle. First of all it takes a small group of, a small strip of voting territory down in the 2nd District in Warren County and Halifax County and it takes a group of Native Americans and remove[s] them into the 1st District from the 2nd District. This small group of Native Americans that are in Warren County that I represent and then in Halifax County that's represented by Representative Hardaway. The other thing that the bill does is that it takes, uh, 4 precincts, Fountain, Faulkland, Farmville west and Farmville east in the 1st District subject, uh, as a result of the amendment this morning by the Committee and puts them back into the 2nd District. And I would like to ask a couple of questions, if I may, to Representative Jones, Mr. Speaker, please?

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[29] Rep. Green: Do you not realize that, uh, first of all, publicly Congressman Jones has announced that he's going to retire, and that being the case does it not sound logical that leaving these precincts in the 2nd District would remove from the 1st District that image of a congressman that's been there for a long time that would decrease the chances of a minority getting elected?

Rep. Jones: Representative Green, I have great faith in the black voters in the 1st District, their intelligence and their intelligence to look at candidates, both white and black, and decide which candidate they want to vote and support. So I think that what we've done with the amendment today, if I may, that I offered that was voted on, uh, 18 to 9, passed the Redistricting Committee, chaired by Mr. Hunt, Bowen and Fitch.

[30] Basically what I was trying to do was to put back black citizens and white citizens in my home-town and

(inaudible) asked that we try to get Farmville, Faulkland, and Fountain back into the Pitt County area and also back into the 1st District. Very quickly, again, I have faith in the ability and the intelligence of the black voters. I think they should have every option to vote for a candidate, where [sic] it be black or white.

Rep. Green: Uh, Mr. Speaker, one more question, please.

Speaker Blue: Does the gentleman yield for another question?

Rep. Jones: Yes sir.

Rep. Green: Let's say, uh, since the deliberations in our committees and on this floor are open, are for public record, did you not support, as a Democrat, this morning, the amendments submitted by your distinguished Republican colleagues in the Committee?

Rep. Jones: Yes sir, I did in Committee vote for Mr. Justus' plan. I think that that plan is one that should have an . . . be thoroughly considered, the plan did lose and I don't mind saying to the members on the floor, I have all my career, this is my last session here, I have tried to vote my conscience, many people might question that, I tried to do what's right for the right reason and therefore I believe that the best interests of the people of North Carolina would be served. I did support this plan that we now have before us once it, once my amendment was put into it because my biggest concern about the plan that had been offered was the fact that the NAACP Plan and also the plan that passed the House back in July had Farmville, Fountain and Faulkland in the 1st District. My concern with what I received last Saturday was that those 3 precincts, for whatever reason, were taken out. So once I got those three precincts back into it, I could support this plan.

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[37] Rep. Flanerty: The other thing that concerns me is when you look at the districts and I touched on this somewhat when I talked about Caldwell County and the way that it appeared to me that the plan was drawn up very much in a partisan way, especially in the west. If you look at some of the counties, for example. In Cleveland County, uh, the majority, there's 42,000 people in District 9, Representative McMillan's district. There's 42,000 in District 11, the one that's presently held by Representative Taylor. However, if you look at the minority, the minorities are two to one in Representative Taylor's district and that county, as I remember, was not split that way[.] Previously, it was all in one district. If you'll look at Caldwell County, for example, in District 10, we've only got 545 blacks left in Caldwell County in District 10. There's 3,336 of them that have now been put into Representative Neal's district. And I've been very fortunate. I've enjoyed the support of the black population in Caldwell County and I don't think they would like to be fragmented like that. I've not heard it. In Burke County, for example, you've left 521 blacks in Representative Ballenger's district. There are 4,657 now put into Representative Neal's district. In Buncombe County, uh, there are 300 well, 302 blacks that are put into Representative Ballenger's district and the majority, 14,034 are left in the far west. Uh, I would just ask you to realize that, you know, we're being told that we're doing all of this because of what the Justice Department says. But the one thing they said was look at the south-east and we've not done that and I'd ask you to consider that when you vote on this plan.

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[38] Rep. Pope: Representative Ramsey, on the debate on the House bill you spoke quite forcefully and effectively about unnecessary dividing of counties. On the plan we have before us as has been pointed out, the old 11th District has been divided several times. The Buncombe, Henderson, Polk County areas. That does

not involve Voting Rights Act counties, does not directly involve any of the minority districts created under [the] Voting Rights Act. Do you support this division of the counties?

Rep. Ramsey: I supported this bill before, I'm talking about the Congressional Redistricting bill that has passed its second reading and is now on its third reading. Yes, I support it because that's the only bill we have and we are sent here to do a job. One of those jobs is to come forth and pass a Congressional Redistricting bill, that's the only one we have. Yes, I support it.

Rep. Pope: Mr. Speaker.

Speaker Blue: The gentleman from Wake, Representative Pope has the floor.

Rep. Pope: Ask Representative Fitch will yield for a question.

Speaker Blue: The gentleman from Wilson, Representative Fitch, yield for a question?

Rep. Fitch: I yield.

Speaker Blue: He yields.

Rep. Pope: Representative Fitch, in your opening remarks, and that was some time ago now, you referred that this was done . . . this plan was prepared to meet the requirements of the Voting Rights Act and Justice Department. Is there any part of the Voting Rights Act that you know of that requires for a finger of District 10 to go into House District 11 and divide those counties. Polk, Henderson, Buncombe County in that area.

Rep. Fitch: Your question is whether or not the Voting Rights Act requires us to go into those areas and divide those counties, is that your question?

Rep. Pope: Yes sir.

Rep. Fitch: No.

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[39] Rep. Pope: Mr. Speaker and members of the House, a lot of remarks we've heard here tonight, the Justice Department, the Voting Rights Act can be used as a whipping boy as an excuse for how terrible this map is. But we've seen several proposals in the form of amendments and bills filed which sought to comply with the Justice Department with the Voting Rights Act which still kept the remainder of the state fairly compact and contiguous. This is the only plan that has been presented that does have the 5th, 10th, 11th, and even parts of the 9th District intermingled with long fingers and dividing counties where it is not necessary to comply with the Voting Rights Act. Representative Flaherty's amendment and Representative Justus' amendment, they had compact 11th Districts. Comparisons have been made with Representative Balmer's plan, the bills he filed. All of them kept the 11th District compact and all the other areas of the state as compact as possible. So this is not the fault with the Justice Department, it is not even the fault with the Voting Rights Act, not the entirety of this scrambled eggs of a congressional district. It is pure partisan gerrymandering. And we've seen that in this debate as well. Representative Jeralds basically said it. If I'm quoting him accurately, he said power conceives nothing that the Democrat majorities, in this House is going to use its power to protect its incumbents, its overall majority in the Congress and in the General Assembly. And we've seen power in this General Assembly. Power to protect, used to protect incumbents, power over the constitution which the General Assembly has not to give the people the right to vote on the veto for the first time in our history. The power to increase spending and then increase taxes which takes away people's right to their own right, the right to earn, keep more of their own hard-earned money in order [. . .]

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HOUSE CONGRESSIONAL REDISTRICTING COMMITTEE**January 23, 1992**

[2] Chairman Fitch: The Committee Chairmen present to you for your consideration this morning, the 1992 Congressional Base Plan #9. As you know, the Federal Government rejected a plan which this body ratified in July saying that we should have created a second majority-minority Congressional District. The purpose of this particular [plan] is to meet the requirement of the Federal Government by enacting a redistricting plan that has two districts that are majority black in population. The plan we present to you this morning is similar in most regards to the plan that was mailed out to you over the weekend. Let me, however, review for you some of the important features. First of all, we feel that this plan meets the one-man-vote requirement in population. Each district has a population deviation of either one person or zero people, thus the State should not be challenged on that particular basis. Second, the Plan goes beyond what we consider to be the requirements of the Voting Rights Act by creating minority districts. District One is 57.16% black in population and 53.3[%] black in voter age population. District Twelve is 56.63% black in population and 53.34% black in voter age population. We do not yet have the accurate voter registration statistics on these districts, but Harvey Gantt won each of these districts by substantial majority. We believe that this gives black citizens of the State a realistic opportunity to elect congress persons within their choosing. Although these majority black districts are spread out, they have commonalty. District One in the eastern North Carolina is largely rural in character. Only 18% of its population lives in cities of 20,000 or more. In contrast, District Twelve, which runs from Gastonia through Charlotte, Winston-Salem, Greensboro to Durham, 80% of that population lives in cities of 20,000 or more. In addition to these two majority black districts there are four more

districts, #2, #3, #4 and #8, that are over 20% black in population. This will give black citizens of those districts a substantial opportunity to influence the election of a person for congress from their district. We believe that our approach is superior to the one suggested by the Federal Government. The Justice Department suggested a second district running from Charlotte to Wilmington. Such a district does not have commonalty in existence between the people from Charlotte to Wilmington. The urban needs with the people of Anson and Bladen Counties are rural. In addition, such a district only would provide for a minority representation if blacks and Native Americans were to vote together and the voting record, as we have been able to investigate it and establish, does not bear out that that is a factual situation; thus we expect that our plan will work better for blacks than would the approach suggested by the Bush Administration. I will not go over in detail the composition of each district. Your statistical package contains maps of each. I will point to you the map of District Nine and Ten, which have been marked by substantially since the Plan that you received over the weekend. We have made each more compact in response to the concerns that were stated by many of you. In addition we have returned all of Congressman Ballenger's home county to the [3] Tenth District. We also made changes to the Second and the Fourth Districts which enabled us to make Franklin, Johnston and Chatham Counties whole. I have heard many concerns about the number of counties that are divided in this Plan and I would like to respond to those concerns. This body enacted a Congressional Redistricting Plan in July which divided no county into more than two parts. The Justice Department rejected that plan. Rep. Balmer introduced four Congressional Redistricting bills. Each of those divided a substantial number of counties into three districts. Indeed, one of his plans divided ten counties into three districts . . . one county into four districts. Rep. Justus' plan also

divided many counties into three districts. The plan that we propose keeps 57 counties whole, divides 35 counties into two districts and divides eight counties into three districts. Those of you who object to our division of these counties should have urged the Justice Department and the Bush Administration to accept the plan originally sent to the Justice Department. Finally, we think that this plan is fair on a partisan basis. We believe that it creates four districts, including the two majority black districts that are likely to elect Democrats . . . numbers One, Four, Seven, and Twelve. Three are likely to elect Republicans . . . numbers Six, Nine and Ten, and five that could go either way. We have tried to meet the dictates of the Bush Administration, the needs of the minority community of this State and the concerns raised by many of you and by many other citizens whom we have heard. We would urge your support for this plan.

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[5] Rep. Flaherty: Thank you Mr. Chairman. As I explained two days ago, when we were sitting up there in the Public Hearing I heard at least two people . . . one from the Black Leadership Caucus . . . one from the NAACP . . . indicating that they wanted us to consider two majority-minority districts and a strong influence district in the southeast and that seemed to be in line with what the Justice Department's letter indicated with respect to the southeast. The two minority districts that I have . . . the first one would be the Second District and I think that is far more compact than that proposed in this new Base Plan that has been submitted to us today. Not only is it more compact, but it would contain 53.15% of the voting age popu . . . or the registration would be black and that should be a district in which blacks would have influence and could win. District Twelve is the one that was pretty similar to the Merritt-Rose or NAACP and I have found that is the same or similar plan based

on a staff memo dated 10 January. So, I got an answer to that question. That is basically the same thing, but District Twelve . . . I asked them to rerun the figures as they did for the chairmen's plan and it indicates that District Twelve would be 53.7% black registration which, of course, would be a good influence . . . would be giving them influence and could allow them to elect a black congressman. The other thing that I think is very important is District Seven which would be the district going across the southeast. It does not go into Charlotte. It does not go into Wilmington, but it runs through the southeast . . . the rural areas of the southeast. The black registration in that district would be 41.27% which would give blacks a great deal of influence in that district and with the Native American population, the total minority registration is now 52.47%. I think that it is important to note even though it has been stressed that Native Americans and blacks have not shown any consistency in voting the same way, that when you look at the Republican registration, take that out, and then look at what is left in the Native American and black; particular[ly] in the [6] Democrat registration in a Primary I would find it hard to believe that anybody would argue that blacks would not have influence in the Democrat Primary in that district and could not in fact win. Another crucial thing with respect to that district, it gives the Native American population in that district a swing vote between the white population and the black population and I think that does do what was requested with respect to the Native Americans. Now it is my understanding . . . I don't know if this is totally accurate . . . but it is my understanding that Rep. Rose has indicated that he would not mind running in minority districts. So if you are looking to protect incumbents that would be a district that he could run in. One thing that I did not do when I ask[ed] staff to draw this map was to look at partisan issues. I did not have them do such things as go through the center of Caldwell

County . . . a county that has precincts . . . I think that every one of them have a majority registration Democrat . . . every one of them can be . . . we've got a Democrat Sheriff and a Democrat Clerk of Court . . . but what this plan does that the Committee Chairmen have passed out today goes right through the heart of Caldwell, hits those precincts that vote most heavily Democratic, and I am a little bit disappointed because I have won a lot of these precincts. I may have been the only Republican to carry them, but they took them out of the Congressional District . . . go right down in through . . . into Burke County as Rep. Decker had indicated . . . the people back home do not like this. I showed them the map that was sent to me and that problem has not been changed at all. I did not ask them to draw anything with respect to partisanship and I just asked that they make it as compact as possible. I did ask that they put Mitchell and Avery in the far West district with Yancey County. I was up there this Saturday and it was reiterated to me again by the leaders in both those counties that wanted to stay in the Eleventh . . . that they wanted to stay with Yancey County. I think that it is a far superior plan. I think it answers what the Justice Department has asked for and there are some other things that I would like to point out. With respects [sic] to the blacks, for example, in Cumberland County, they would be better covered in this plan that I have, I believe, than in the plan that the Committee Chairmen have. It also allows the blacks in Sampson, Wayne and Wake Counties to be treated similarly to blacks throughout the State. They are not put into a district just to save some incumbent congressman. I would ask the Committee to consider this plan very seriously. It is the only plan that I have seen where North Carolina could have three black congressmen elected to Washington. Under the Committee Chairmen's plan, assuming that things go the way they have in this State, there will not be three black con-

gressmen. I would ask you to support it and I would be glad to answer any questions.

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[7] (—:—): We all know that there is a lot of strictly partisan politics involved in this. We are all here protecting our backside and there is a lot of things involved, but how do you defend when you look on page . . . on the page that says "elections district summary" . . . how do you defend when you look at those statistics? You are saying you are going to elect three black congressmen, but on the flip side of that if you look at those statics are you not also packing into the three districts and creating a very good possibility of electing seven Republican congressmen and how do we defend that? I mean if our side is gerrymandering politically and packing . . . are you not guilty also of the exact same thing by looking at the statics [sic] of election results?

Rep. Flaherty: No sir. I understand your point because of the fact that you could argue that. I didn't ask them to go down into Caldwell County for example and find those precincts in a county that has all Democratic precincts . . . to find those precincts that vote the strongest Democrat and then put them into the Fifth District. That is what it does in Caldwell County . . . that's what it does in Burke County. I didn't have staff do that. I am not saying the Committee Chairmen did, but if they used . . . whatever plan they used . . . the person who originally drew that apparently did, because that's what happens in Burke and Caldwell. I didn't do that. Now I understand what you are saying in looking at the races, but if you will note you have got two races where we won statewide. That is not normally the situation in North Carolina Politics. Normally Democrats win statewide. So if you will look at these races, yes you could make that argument, but I don't think these races

are fair and accurate races to look at when you are trying to make an argument like that and I did not ask that to happen. I understand what you are saying and when you make minority districts and since the majority of minorities are Democrat registration, if you will look at the Democrat registration in District One, District Two, District Seven and District Twelve, you are taking a heck of a lot more Democrats out there than you would otherwise because the minorities have a tendency to register Democrat. The other thing that I think is important and one of the reporters asked me, does this not make a bunch of Republican districts. All twelve of these districts are majority Democrat registration and I can't believe that a strong Democratic candidate or majority candidate could not keep his party faithful to vote for him. All twelve of them are more than 50% registered Democrat . . . well, excuse me, one of them is 49.62. The others are all over 50%. So, no sir I don't agree with that.

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[8] Rep. Gottovi: The minority input that I have had from New Hanover County is that they would prefer to be in a majority minority district, but they liked the idea of being able to vote in that majority minority district that was created through the plan that we were sent last weekend.

Rep. Flaherty: May I make a couple of more comments and I will shut up?

Chairman Fitch: Rep. Flaherty is recognized.

Rep. Flaherty: As I indicated on the first day, these plans could be changed somewhat. One of the things that I would like to do is try to put more counties back together . . . take a piece from here and a piece from there and see if we can't put more counties whole. Another thing that can be done, and I explained this to Rep.

Michaux early on, if you could change these minority districts around . . . you could substitute for example . . . I've got Durham in the Second District whereas it could be in the Twelfth. That makes little difference to me. I don't really agree with the way the Justice Department is doing. I don't really agree with the way the courts have interpreted the one-man one-vote rule. I think it is absolutely asinine. However, you can play with this and you can get it to where it would be a good plan if it would be considered. I've not seen any other, as I have said, that would give minorities the chance to elect three congressmen in this State and this one can do it.

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**STIPULATIONS OFFERED BY
DEFENDANT-INTERVENORS**

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1. In 1989, 27.1% of African Americans in North Carolina had incomes below the "poverty" level, as that term is defined by the federal Census Bureau, as compared with 8.6% of whites. Among families, 24.4% of African American families and 5.9% of white families lived in poverty. (U.S. Department of Commerce, Bureau of the Census, 1990 Census of Population: Social and Economic Characteristics, Tables, 8, 9).

2. African Americans in North Carolina comprise 22.07% of the State's total population. They constitute 45.4% of all persons living in poverty in North Carolina. (U.S. Department of Commerce, Bureau of the Census, 1990 Census of Population: Social and Economic Characteristics, Table 54).

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5. The following table compares incomes in 1989 of African Americans and whites:

| | Median Household Income | Median Family Income | Mean Household Income |
|-----------------------|-------------------------------|----------------------------|-----------------------------|
| Black | \$17,979 | 20,926 | 22,523 |
| White | 29,300 | 34,487 | 36,034 |
| Difference | 11,321 | 13,561 | 13,511 |
| Percent Difference | 38.6% | 39.2% | 37.5% |

(U.S. Department of Commerce, Bureau of the Census, 1990 Census of Population, Social and Economic Characteristics, Tables 8, 9, 53).

6. In 1989, the average per capita income of whites in North Carolina was \$14,450. The average per capita income for blacks was \$7,926. (U.S. Department of

Commerce, Bureau of the Census, 1990 Census of Population, Social and Economic Characteristics, Tables 8, 9, 53).

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8. African American households in North Carolina receiving wages, salary, or self-employment income in 1989 had mean earnings of \$24,176. For white households, the mean earnings figure was \$35,880. (U.S. Department of Commerce, Bureau of the Census, 1990 Census of Population, Social and Economic Characteristics, Table 53).

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15. In 1990, 5.9% of African Americans over age 25 had less than a fifth grade education. Among whites, 2.3% lacked this level of education. (U.S. Department of Commerce, Bureau of the Census, 1990 Census of Population, Social and Economic Characteristics, Table 47).

16. As of 1990, 73.1% of the State's whites and 58.1% of its blacks were high school graduates. (U.S. Department of Commerce, Bureau of the Census, 1990 Census of Population, Social and Economic Characteristics, Table 47).

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20. In 1971, African Americans made up 20.8% of public school teachers in North Carolina, and 29.6% of pupils. In 1991, blacks comprised 16.2% of teachers, and 30.2% of pupils. (North Carolina Department of Public Instruction, African American Male Task Force Report, July 1992).

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31. In 1990, the civilian unemployment rate for blacks was 9.4%. The rate for whites was 3.6%. (U.S. Depart-

ment of Commerce, Bureau of the Census, 1990 Census of Population, Social and Economic Characteristics, Tables 8, 9, 49).

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33. In 1990, 24.7% of whites in North Carolina were employed in managerial and professional occupations; 12.6% of African Americans were employed in managerial and professional occupations. (U.S. Department of Commerce, Bureau of the Census, 1990 Census of Population, Social and Economic Characteristics, Tables 8, 9).

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35. The following chart shows the percent employment in 1990 of whites and African Americans 16 years and over in certain occupations in North Carolina.

| Occupation | Percent White | Percent Black |
|---|---------------|---------------|
| Managerial and professional specialty occupations | 87.7 | 10.6 |
| Technical, sales and administrative support occupations | 84.8 | 13.6 |
| Service occupations | 65.3 | 32.3 |
| Operators, fabricators, and laborers | 68.2 | 29.1 |
| Handlers, equipment cleaners, helpers, and laborers | 67.5 | 29.8 |

(U.S. Department of Commerce, Bureau of the Census, 1990 Census of Population, Social and Economic Characteristics, Table 50).

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38. The following chart shows percentages of black and white households in North Carolina for certain housing conditions.

| | Percent Owner | Percent Renter | Percent Overcrowded ¹ and Inadequate Plumbing ² | Percent Lacking complete plumbing facilities | Lacking complete kitchen facilities ³ |
|----------------|------------------|-------------------|---|--|---|
| White | 72.9 | 27.1 | .03 | .7 | .5 |
| Black | 49.6 | 50.4 | .5 | 3.7 | 2.4 |
| Other | 54.3 | 45.7 | .2 | 1.4 | 1.2 |
| Whole State | 68.0 | 32.0 | .1 | 1.3 | .9 |

[¹ Footnotes omitted.]

(U.S. Department of Commerce, Bureau of the Census, 1990 Census of Housing, Detailed Housing Characteristics, Tables 6, 7, 17-21, 39-43).

* * * *

40. 11.6% of black renters below the poverty level reside in overcrowded units. For white poverty households, 4.2% live in overcrowded dwellings. Among homeowners below the poverty level, 7.4% of black households live in overcrowded homes; 2.2% of white households are overcrowded. Overcrowding is defined as having more than one person per room. (U.S. Department of Commerce, Bureau of the Census, 1990 Census of Housing, Detailed Housing Characteristics, Tables 45, 46).

41. In 1990, 23.4% of black households had no motor vehicle available. 6.2% of white households were without a vehicle. At the same time, 15.8% of black households in North Carolina did not have a telephone. 4.7% of white homes did not have a telephone. (U.S. Department of Housing, Bureau of the Census, 1990 Census of Housing, Detailed Housing Characteristics, Tables 6, 7).

* * * *

48. The number of cases of mortality per 10,000 live births for blacks during the period 1989-1990 in North Carolina was 473.6. The number for whites was 346.2.

(N.C. Department of Environment, Health, and Natural Resources, State Center for Health and Environmental Statistics, "Health Status of Blacks in North Carolina," Table 22, October 1993).

49. During the period 1987 to 1991, the median age at death in North Carolina was 74.3 for whites and 68.5 for blacks. (N.C. Department of Environment, Health, and Natural Resources, State Center for Health and Environmental Statistics, "Health Status of Blacks in North Carolina," Table 25, October 1993).

50. In North Carolina a white male child born in 1990 has a life expectancy of 71.8 years; a white female can expect to live to age 79.7. Male minorities have a life expectancy of 65.7 and minority females, 74.7. African Americans make up 90% of the minority population in North Carolina. (Office of State Planning, State Center for Health and Environmental Statistics, 1989-91 Data).

* * * *

60. Of the 14 African Americans who have served as Resident Superior Court Judges since court reform in 1967, 12 assumed the office after the effective date of Chapter 509 of the 1987 Session Laws. Chapter 509 created eight majority black districts and one combined black/Native American district for Superior Court.

* * * *

63. The following table shows population and registration for Black and White voters in North Carolina.

[Table reproduced landscape in this printing at 299a.]

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76. As of January 1989, blacks constituted 21% of the voting age population in North Carolina, and 8.1% of all elected officials in the State. Of 5,554 elected officials, 449 were black. Of 170 state legislators, 15 were black. The highest concentration of black elected officials was

in municipal governing bodies, in which 262 African Americans served. There were 82 black members of local school boards and 42 members of county commissions. Of 100 sheriffs, 4 were black. (Black Elected Officials, Joint Center for Political Studies Press, 1989).

77. No African American person was elected to the North Carolina General Assembly from 1900 until 1968, when one African American was elected to the House. No black person was elected to the Senate until 1974, when two black senators were elected. (Keech & Siström, *The Implementation of the Voting Rights Act in North Carolina*, Table 11).

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80. In 1973, North Carolina's 100 counties were governed by a total of 521 county commissioners, of whom 8 were black. In 1989, there were 529 elected county commissioners, of whom 36 were black, and 3 were American Indian.

* * * *

63. The following table shows population and registration for Black and White voters in North Carolina.

| Date ¹ | Total Reg. Voters | White Reg. Voters | White Reg. Voters as % of Total Reg. | Black Reg. Voters | Black Reg. Voters as % of Total Reg. | Total Voting Age Population (VAP) ² | White VAP | Black VAP | Percent of White VAP Registered | Percent of Black VAP Registered |
|-------------------|-------------------------|-------------------------|---|-------------------------|---|---|-----------|-----------|---------------------------------------|---------------------------------------|
| 1970 | 1,945,187 | 1,639,704 | 84.3 | 294,880 | 15.2 | 2,997,410 | 2,407,434 | 565,463 | 68.1 | 52.2 |
| 1980 | 2,774,844 | 2,313,722 | 83.4 | 439,713 | 15.9 | 4,224,031 | 3,299,160 | 857,241 | 70.1 | 51.3 |
| 1985 | 2,976,432 | 2,386,622 | 80.2 | 564,509 | 19.0 | 4,623,260 | 3,600,850 | 932,550 | 66.3 | 60.5 |
| 1986 | 3,080,990 | 2,467,561 | 80.1 | 585,348 | 19.0 | 4,703,105 | 3,661,187 | 947,611 | 67.4 | 61.8 |
| 1987 | 3,092,138 | 2,475,753 | 80.1 | 589,203 | 19.1 | 4,782,951 | 3,721,525 | 962,673 | 66.6 | 61.2 |
| 1988 | 3,432,042 | 2,750,667 | 80.2 | 648,213 | 18.9 | 4,862,787 | 3,781,863 | 977,735 | 72.7 | 66.3 |
| 1989 | 3,054,689 | 2,475,562 | 81.0 | 549,427 | 18.0 | 4,942,642 | 3,842,201 | 992,796 | 64.4 | 55.3 |
| 1990 | 3,347,635 | 2,677,162 | 80.0 | 635,045 | 19.0 | 5,022,488 | 3,902,539 | 1,007,856 | 68.6 | 63.0 |
| 1991 | 3,419,561 | 2,737,638 | 80.1 | 645,264 | 18.9 | 5,022,488 | 3,902,539 | 1,007,856 | 70.2 | 64.0 |
| 1992 | 3,817,380 | 3,064,242 | 80.3 | 710,209 | 18.6 | 5,022,488 | 3,902,539 | 1,007,856 | 78.5 | 70.5 |
| 1993 | 3,483,606 | 2,827,868 | 81.2 | 617,876 | 17.7 | 5,022,488 | 3,902,539 | 1,007,856 | 72.5 | 61.3 |

¹ October figures for each year except 1970, for which figures are from December 15, 1970.² Voting Age Population for years 1981 - 1989 are interpolated using 1980 and 1990 population figures and assuming constant population growth during the period.